



## VA ACQUISITION CIRCULAR

**August 29, 2002**

**Number 97-9**

1. **Material Transmitted:** The attached pages contain revisions to Department of Veterans Affairs Acquisition Regulation (VAAR) Parts 801, 825, 832, 836, 846, and 852.

2. **Summary of Changes:** This acquisition circular provides replacement pages for the loose-leaf version of the VAAR. It incorporates final rule RIN 2900-AJ56, Construction and Architect-Engineer Contracts, published in the Federal Register on Tuesday, July 30, 2002 (67FR49257-49263).

RIN 2900-AJ56 amended VAAR Part 836 and related parts to update position titles, make minor grammatical corrections and revisions, revise and update section numbers and titles, relocate material to correspond to the Federal Acquisition Regulation (FAR), and delegate authority. In addition, the rule updated regulations and added coverage regarding the authority of the National Cemetery Administration to award architect-engineer contracts. It replaced a general prescription directing the use of all VAAR clauses relating to construction contracts with specific prescriptions for each clause, removed obsolete or duplicative material, updated the VAAR regarding the requirement for certificates of current cost or pricing data, and provided agency procedures regarding disclosure of the Government cost estimate on construction contracts. The change also removed a "guarantee" clause from the VAAR and provided agency procedures for VA contracting officers to use the FAR "warranty" clause for construction contracts exceeding the micro-purchase threshold.

2.

## **VA Acquisition Circular 97-9**

**August 29, 2002**

In addition, the change revised provisions regarding the acceptance of foreign construction materials to correspond to changes made in the FAR and to comply with the Trade Agreements Act and the North American Free Trade Agreement.

More specifically, this document makes the following changes of interest to contracting officers:

a. Prescriptions for use of the clause at 852.236-89, Buy American Act, and its new Alternates have been added to Part 825. New Alternates for this clause have been added in Part 852 to accommodate the Trade Agreements Act and the North American Free Trade Agreement.

b. Prescriptions for use of the clauses at 852.236-82 and 852.236-83 have been added to Part 832.

c. Guidance on releasing the Government estimate on construction solicitations has been added at 836.203.

d. Clarification has been added in Part 836 regarding the award of a construction contract to a firm or person that designed the project. The prohibition against such awards does not apply to design-build solicitations.

e. A requirement has been added to furnish a written notice of award to the contractor on contracts in excess of \$25,000.

f. Provisions have been added allowing the use of methods other than certified mail for furnishing certain notices to contractors, as long as proof of delivery is provided.

g. Prescriptions for use of various construction clauses have been added to Parts 836 and 846.

h. The VAAR clause for warrant of construction, 852.236-75, Guarantee, has been removed and contracting officers are now required to use the FAR clause at 52.246-21, Warranty for Construction, instead. For those provisions that were in 852.236-75 but that are not covered by the FAR clause, two new clauses have been added to the VAAR, 852.246-1, Special warranties, and 852.246-2, Warranty for construction—guarantee period services.

i. Construction contract clauses in 852 have been revised to relocate the prescriptions for their use. “Supplements” have been revised to be “Alternates” to match the FAR.

j. Section 852.236-88, Contract changes, which used to contain two distinct clauses, has been revised to contain only one clause, paragraphs (a)(1) through (a)(4) of which apply to changes exceeding \$500,000, and paragraphs (b)(1) through (b)(11) of which apply to changes of \$500,000 or less. Revisions have also been made to accommodate changes to the cost and pricing data threshold in FAR 15.403-4. Note that for changes costing between \$500,001 and \$550,000, there will be no ceiling on overhead or profit, but certified cost or pricing data will not routinely be required from the contractor. The contractor may be required to provide information other than certified cost or pricing data and the contracting officer will need to negotiate overhead and profit as part of the change.

3.

**VA Acquisition Circular 97-9**

**August 29, 2002**

This change does not update any of the non-codified material in the VAAR (material preceded and succeeded by a series of colons “:::xxxxxxx:::”). Such material will be updated and relocated to the Directives Management System.

**3. Filing Instructions:**

**Remove pages:**

Part 801 Table of Contents (TOC)  
8-1 thru 8-4  
Part 825 TOC  
25-3 thru 25-5  
Part 832 TOC  
32-1 thru 32-2  
836 TOC  
36-1 thru 36-12  
Part 846 TOC  
46-1 thru 46-6  
852 TOC  
52-24.1 thru 52-54

**Insert pages:**

Part 801 TOC  
8-1 thru 8-4  
Part 825 TOC  
25-3 thru 25-6  
Part 832 TOC  
32-1 thru 32-2  
836 TOC  
36-1 thru 36-12  
Part 846 TOC  
46-1 thru 46-6  
852 TOC  
52-25 thru 52-54

**4. Effective date:** RIN 2900-AJ56 is effective on August 29, 2002.

/S/

Gary J. Krump  
Deputy Assistant Secretary for  
Acquisition and Materiel Management

Distribution: RPC 7029  
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**PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM**

**TABLE OF CONTENTS**

|         |                |
|---------|----------------|
| Sec.    |                |
| 801.000 | Scope of part. |

**SUBPART 801.1—PURPOSE, AUTHORITY, ISSUANCE**

|            |                                   |
|------------|-----------------------------------|
| 801.101    | Purpose                           |
| 801.103    | Authority                         |
| 801.104    | Applicability                     |
| 801.104-70 | Exclusions                        |
| 801.105    | Issuance                          |
| 801.105-1  | Publication and code arrangement. |

**SUBPART 801.3—DEPARTMENT ACQUISITION REGULATIONS**

|            |   |
|------------|---|
| 801.301    | Policy  |
| 801.301-70 | Paperwork Reduction Act requirements.         |
| 801.303    | Publication and codification.                 |
| 801.304    | Department control and compliance procedures. |

**SUBPART 801.4—DEVIATIONS FROM THE FAR OR VAAR**

|         |                        |
|---------|------------------------|
| 801.403 | Individual Deviations. |
| 801.404 | Class Deviations.      |

**SUBPART 801.6—CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES**

|            |   |
|------------|---|
| 801.601    | General.  |
| 801.602    | Contracting officers.   |
| 801.602-2  | Responsibilities  |
| 801.602-3  | Ratification of unauthorized commitments.   |
| 801.602-70 | Legal/technical review requirements to be met prior to contract execution.                        |
| 801.602-71 | Processing contracts for legal/technical review.  |
| 801.602-72 | Documents to be submitted for legal review.   |
| 801.602-73 | Certification by reviewing official.  |
| 801.602-74 | Results of General Counsel's legal review.  |
| 801.602-75 | Other requirements.   |
| 801.603    | Selection, appointment, and termination of appointment.   |
| 801.603-1  | General.  |
| 801.603-70 | Representatives of contracting officers   |
| 801.603-71 | Representatives of contracting officers; receipt of equipment, supplies and nonpersonal services. |

|           |  |
|-----------|--|
| 801.670   | Special and limited delegation.  |
| 801.670-1 | Issue of Government bills of lading—transportation of remains of deceased beneficiaries. |
| 801.670-2 | Issue of Government bills of lading—transportation of property.                          |
| 801.670-3 | Medical, dental, and ancillary service.  |
| 801.670-4 | National Cemetery System.  |
| 801.670-5 | Letters of Agreement.  |
| 801.680   | Contracting authority of the Inspector General.  |
| 801.690   | VA Contracting Officer Certification Program.  |
| 801.690-1 | Definitions.   |
| 801.690-2 | General.   |
| 801.690-3 | Responsibility for administration of Contracting Officer Certification Program (COCP).   |
| 801.690-4 | Selection.   |
| 801.690-5 | Appointment.   |
| 801.690-6 | Termination.   |
| 801.690-7 | Interim appointment provisions.  |
| 801.690-8 | Distribution of SF 1402, Certificate of Appointment.                                     |
| 801.690-9 | Post appointment maintenance of certifications. [Reserved]                               |

**Part 801 Veterans Affairs Acquisition Regulations System**

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**PART 801 - VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM**

**801.000 Scope of part.**

This part prescribes general policies and background regarding the Veterans Affairs Acquisition Regulation (VAAR). It includes information regarding the maintenance and administration of the VAAR and includes procedures for deviations from the VAAR and the Federal Acquisition Regulation (FAR).

**SUBPART 801.1 - PURPOSE, AUTHORITY, ISSUANCE**

**801.101 Purpose.**

(a) This subpart establishes Chapter 8, Veterans Affairs Acquisition Regulation, of Title 48—Federal Acquisition Regulation System, Code of Federal Regulations.

(b) The VAAR must be utilized in conjunction with the FAR. The VAAR cannot be utilized by itself.

**801.103 Authority.**

The VAAR and any amendments thereto are issued by the Secretary of Veterans Affairs as provided by 38 U.S.C. 501 and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)).

**801.104 Applicability.**

(a) The FAR and VAAR apply to all acquisitions of the Department (including construction) made with appropriated funds and procurements made with Supply Fund monies (39 U.S.C. 8121).

(b) The FAR and VAAR will apply to the special procurement programs authorized by Title 38, U.S. Code (Viz., Veterans Canteen Service and the Loan Guaranty programs) to the extent indicated in the VAAR.

**801.104-70 Exclusions.**

The FAR and VAAR will not apply to purchases and contracts which utilize General Post Funds when such regulations would infringe upon a donors prerogative to specify the exact item to be purchased and/or the source of supply.

Part 801 Veterans Affairs Acquisition Regulations System

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**:::801.105 Issuance:::**

**:::801.105-1 Publication and code arrangement.**

(a) Each head of a contracting activity will assure that the activity is on the distribution list to receive the *Federal Register*.

(b) Chapter 8 will be issued in looseleaf form for use by employees of VA. Material which is not codified and therefore does not appear in the *Federal Register* will be preceded and followed by a series of three colons in the looseleaf edition. Looseleaf changes to Chapter 8 will be amended by serially numbered transmittal sheet which will transmit and summarize new or revised material. Material added or changed will be identified by marginal lines.:::

**SUBPART 801.3 DEPARTMENT ACQUISITION REGULATIONS**

**801.301 Policy.**

(a) VAAR, amendments and interim changes thereto will be issued by the Secretary of Veterans Affairs after necessary reviews by cognizant VA officials.

(b) Implementing procedures, instructions and guidelines necessary to implement the VAAR and the FAR may be issued by the heads of contracting activities. Such issuances may include delegations of authority, review and approval for acquisition action up to the dollar level delegated to that contracting activity by this regulation as well as providing procedural guidance for users. Such issuances will be the minimum necessary to provide a logical implementation of FAR and VAAR requirements and will be internal to the facility, i.e., it will not specify reporting/recordkeeping requirements for the public (see 801.301-70(b)).

**801.301-70 Paperwork Reduction Act requirements.**

(a) It is the policy of the Government to keep to the minimum the amount of recordkeeping and reporting required of the public. The objective applies to the Department of Veterans Affairs acquisition system.

(b) Contractors will not be requested to maintain systems of records unless prescribed in FAR or VAAR.



Part 801 Veterans Affairs Acquisition Regulations System

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(1) A deviation to this prohibition may be processed in accordance with 801.403 in order to allow the contracting officer to require contractor reporting or recordkeeping beyond that prescribed in the FAR and VAAR. The request for deviation will clearly specify what information or recordkeeping will be required and why it is required. The request will be signed by the head of the contracting activity.

(2) The Deputy Assistant Secretary for Acquisition and Materiel Management (95) will review the request and upon concurrence will likewise submit the request to Office of Management and Budget (OMB) for approval as prescribed by the Paperwork Reduction Act of 1980. If approved, the Deputy Assistant Secretary for Acquisition and Materiel Management will send the approval back to the requester with the OMB clearance number.

(c) In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this VAAR have been approved by OMB and have been given the following approval numbers:

| 48 CFR part<br>or section<br>where identified and<br>described | Current OMB<br>Control No. | 48 CFR part<br>or section<br>where identified and<br>described | Current OMB<br>Control No. |
|--|----------------------------|--|----------------------------|
| 809.504(D)   | 2900-0418                  | 852.236-79   | 2900-0422                  |
| 819.7003   | 2900-0445                  | 852.236-80 (Alt. I)  | 2900-0422                  |
| 836.606-71   | 2900-0422                  | 852.236-82 through   |                            |
| 852.211-70   | 2900-0587                  | 852.236-85   | 2900-0422                  |
| 852.211-74   | 2900-0588                  | 852.236-88   | 2900-0422                  |
| 852.211-75   | 2900-0586                  | 852.236-89   | 2900-0622                  |
| 852.211-77   | 2900-0585                  | 852.236-91   | 2900-0623                  |
| 852.214-70   | 2900-0593                  | 852.237-71   | 2900-0590                  |
| 852.219-70   | 2900-0584                  | 852.270-03   | 2900-0589                  |
| 852.236-72   | 2900-0422                  | 871.201-2  | 2900-0416                  |

**801.303 Publication and codification.**

The VAAR is codified as chapter 8 of title 48, Code of Federal Regulations. Codified changes to the VAAR will be published in the *Federal Register*. The Deputy Assistant Secretary for Acquisition and Materiel Management (93) arranges distribution of the issues to VA contracting activities and the Office of Acquisition and Materiel Management should be notified of changes to the distribution list.

Part 801 Veterans Affairs Acquisition Regulations System

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**801.304 Department control and compliance procedures.**

Office of Acquisition and Materiel Management is responsible for ensuring that the VAAR and amendments thereto are developed as prescribed by the FAR.

**SUBPART 801.4 - DEVIATIONS FROM THE FAR OR VAAR**

**801.403 Individual deviations.**

(a) When contracting officers consider it necessary to deviate from the policies set forth in the FAR or VAAR, a request for authority to do so will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management (95). The request will clearly set forth the circumstances warranting the deviation and the nature of the deviation.

(b) When a deviation in an individual case is authorized by the Deputy Assistant Secretary for Acquisition and Materiel Management, the authorization will be filed in the purchase or contract file, whichever is appropriate.

**801.404 Class deviations.**

The Deputy Assistant Secretary for Acquisition and Materiel Management is responsible for determining the need for class deviations. If determined necessary, the Deputy Assistant Secretary for Acquisition and Materiel Management will request deviation authority from the Deputy Secretary through the Senior Procurement Executive as well as complying with the provisions in FAR 1.404.

**SUBPART 801.6 - CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES.**

**801.601 General.**

(a) This subpart establishes general contracting officer authority and responsibility. However, other provisions in both the FAR and the VAAR contain some contracting officer limitations and it is incumbent upon each contracting officer to be aware of those limitations.

(b) Personnel, other than those designated in 801.602, may determine quality, quantity and delivery requirements for items or services to be purchased. However, under no circumstances will individuals who have not been delegated contracting authority commit the Government for

**PART 825—FOREIGN ACQUISITION**

**TABLE OF CONTENTS**

**SUBPART 825.1—BUY AMERICAN ACT—SUPPLIES**

|            |  |
|------------|--|
| Sec.       |  |
| 825.102    | Policy.                                    |
| 825.102-70 | Nonavailability in the United States.      |
| 825.105    | Evaluating offers.                         |
| 825.108    | Excepted articles, materials and supplies. |

**SUBPART 825.2—BUY AMERICAN ACT—CONSTRUCTION MATERIALS**

|            |                                       |
|------------|---------------------------------------|
| 825.202    | Policy.                               |
| 825.202-70 | Nonavailability in the United States. |
| 825.203    | Evaluating offers.                    |

**SUBPART 825.3—BALANCE OF PAYMENTS PROGRAM**

|            |   |
|------------|---|
| 825.302    | Policy.   |
| 825.302-70 | Deviations from the Balance of Payments Programs.                             |
| 825.304    | Excess and near-excess foreign currencies.                                    |
| 825.304-70 | Determination of feasibility to use excess or near-excess foreign currencies. |

**SUBPART 825.6—CUSTOMS AND DUTIES**

|            |                       |
|------------|-----------------------|
| 825.603    | Procedures.           |
| 825.603-70 | Technical assistance. |

**SUBPART 825.7—RESTRICTIONS ON CERTAIN FOREIGN PURCHASES**

|         |             |
|---------|-------------|
| 825.703 | Exceptions. |
|---------|-------------|

**SUBPART 825.8—INTERNATIONAL AGREEMENTS AND COORDINATION**

|         |                       |
|---------|-----------------------|
| 825.870 | Technical assistance. |
|---------|-----------------------|

**SUBPART 825.10—ADDITIONAL FOREIGN ACQUISITION REGULATIONS**

|          |  |
|----------|--|
| 825.1001 | Waiver of right to examination of records. |
|----------|--|

**SUBPART 825.11—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

|          |   |
|----------|---|
| 825.1102 | Solicitation provisions and contract clauses. |
|----------|---|

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Part 825 - Foreign Acquisition

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and any other pertinent information upon which a determination may be made, will be submitted through the Deputy Assistant Secretary for Acquisition and Materiel Management (95), for approval by the Secretary. If approved, a report of the transaction will be prepared and transmitted by the Chief Facilities Management Officer, Office of Facilities Management, in accordance with Executive Order 10582, dated December 17, 1954, as amended.

**SUBPART 825.3 – BALANCE OF PAYMENTS PROGRAM**

**825.302 Policy.**

**825.302-70 Deviations from the Balance of Payments Program.**

When a contracting officer believes that the requirement of the "Balance of Payments Program" is not practicable as set forth in FAR 25.302(b)(2) or (b)(3), he/she will request authority to consummate the contract through the Deputy Assistant Secretary for Acquisition and Materiel Management (95) for approval. Each request must be fully justified, containing all pertinent facts.

**825.304 Excess and near-excess foreign currencies.**

**825.304-70 Determination of feasibility to use excess or near-excess foreign currencies.**

In accordance with FAR 25.304(c), contracting officers will submit requests for determination to utilize excess or near-excess foreign currencies to the Deputy Assistant Secretary for Acquisition and Materiel Management (95).

**SUBPART 825.6 - CUSTOMS AND DUTIES**

**825.603 Procedures.**

**825.603-70 Technical assistance.**

Should the regulations contained in FAR 25.6 be inadequate to meet particular needs of a contracting officer in clearing items through customs and/or obtaining Duty Free Entry of goods, the nearest Regional Office of the United States Customs Service should be contacted for technical assistance. These offices are located as follows:

|                       |                       |
|-----------------------|-----------------------|
| Regional Commissioner | Regional Commissioner |
| U.S. Customs Service  | U.S. Customs Service  |
| 100 Summer St.        | 6 World Trade Center  |
| Boston, MA 02110      | New York, NY 10048    |

**Part 825 - Foreign Acquisition**

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|---|---|
| Regional Commissioner<br>U.S. Customs Service<br>99 SE Fifth St.<br>Miami, FL 33131 | Regional Commissioner<br>U.S. Customs Service<br>423 Canal St.<br>New Orleans, LA 70130 |
|---|---|

|  |   |
|--|---|
| Regional Commissioner<br>U.S. Customs Service<br>585 Felipe St.<br>Houston, TX 77057 | Regional Commissioner<br>U.S. Customs Service<br>300 North Los Angeles St.<br>Los Angeles, CA 90053 |
|--|---|

Regional Commissioner  
U.S. Customs Service  
55 East Monroe St.  
Chicago, IL 60603

**SUBPART 825.7 - RESTRICTIONS ON CERTAIN FOREIGN PURCHASES**

**825.703 Exceptions.**

When felt to be in the best interest of the Government, the contracting officer may request exceptions to the requirements of FAR 25.7 for purchases in excess of \$10,000 from the Secretary through the Deputy Assistant Secretary for Acquisition and Materiel Management (95). Each such request must be fully justified, containing all pertinent facts.

**SUBPART 825.8 - INTERNATIONAL AGREEMENTS AND COORDINATION**

**825.870 Technical assistance.**

Contracting officers may obtain technical information or guidance on international agreements and treaties for procurements outside the United States by contacting the Executive Director and Chief Operating Officer, VA National Acquisition Center.

**SUBPART 825.10 – ADDITIONAL FOREIGN ACQUISITION REGULATIONS**

**825.1001 Waiver of right to examination of records.**

(a) If the contracting officer determines that the “Audit and Records – Negotiation” clause with Alternate III should be used after all efforts to

**Part 825 - Foreign Acquisition**

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include the basic clause have failed, provided that use of Alternate III of the clause is authorized in the instances cited in FAR 25.901, he/she may request, with appropriate documentation, a determination from the Secretary, through the Deputy Assistant Secretary for Acquisition and Materiel Management (95). The Secretary, should he/she concur in the contracting officers determination that the clause should be omitted, will then forward an agency request for omission of the clause to the Comptroller General for a final determination as required by FAR 25.903(c)(1).

(b) All determinations to omit the “Audit and Records – Negotiation” clause will be supported by a determination and findings prepared by the contracting officer containing the information set forth in FAR 25.901(b). The completed determination and findings will be made a part of the contract file. One copy of the determination and findings will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (95).

**SUBPART 825.11 – SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**825.1102 Solicitation provisions and contract clauses.**

(a) The Buy American Act (41 U.S.C. 10a-d), except as modified by the Trade Agreements Act (TAA) and the North American Free Trade Agreement (NAFTA), requires that only domestic construction material shall be used in the performance of contracts for construction. To clarify VA’s position on foreign material, the contracting officer shall insert the clause at 852.236-89, Buy American Act, in solicitations and contracts for construction that contain the FAR clause at 52.225-9, Buy American Act – Balance of Payments Program – Construction Materials.

(b) For solicitations and contracts for construction that include the FAR clause at 52.225-11, Buy American Act—Balance of Payment Program—Construction Materials Under Trade Agreements, with its Alternate I (i.e., subject only to the TAA), insert the clause at 852.236-89, Buy American Act, with its Alternate I.

(c) For solicitations and contracts that include the FAR clause at 52.225-11 without its Alternate I (i.e., subject to both the TAA and NAFTA), insert the clause at 852.236-89, Buy American Act, with its Alternate II.

Part 825 - Foreign Acquisition

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**PART 832—CONTRACT FINANCING**

**TABLE OF CONTENTS**

**SUBPART 832.1—NON-COMMERICAL ITEM PURCHASE FINANCING**

Sec.  
832.111 Contract clause for non-commercial purchases.

**SUBPART 832.4—ADVANCE PAYMENTS**

832.402 General.  
832.404 Exclusions.

**SUBPART 832.5—PROGRESS PAYMENTS BASED ON COSTS**

832.502 Preaward matters.  
832.502-2 Contract finance office clearance.

**SUBPART 832.8—ASSIGNMENT OF CLAIMS**

832.805 Procedure.  
832.805-70 Distribution/notification of assignment of claims.

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Part 832 - Contract Financing

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**PART 832 - CONTRACT FINANCING**

**SUBPART 832-1 – NON-COMMERCIAL ITEM PURCHASE FINANCING**

**832.111 Contract clauses for non-commercial purchases.**

(a) In solicitations and contracts for construction that include the FAR clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, but that do not contain a section entitled "Network Analysis System (NAS)," the contracting officer shall insert the clause at 852.236-82, Payments under fixed-price construction contracts (without NAS). When the solicitations or contracts include guarantee period services, the contracting officer shall use the clause with its Alternate I.

(b) In solicitations and contracts for construction that include the FAR clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and that also contain a section entitled "Network Analysis System (NAS)," the contracting officer shall insert the clause at 852.236-83, Payments under fixed-price construction contracts (including NAS). When the solicitations or contracts include guarantee period services, the contracting officer shall use the clause with its Alternate I.

**SUBPART 832.4 - ADVANCE PAYMENTS**

**832.402 General.**

The determination required by FAR 32.402(c)(1)(iii) will be made by the Deputy Assistant Secretary for Acquisition and Materiel Management. Prior to award, contracting officers will submit, through channels, the information required by FAR 32.409-1 for such determinations.

**832.404 Exclusions.**

(a) Under the provisions of 31 U.S.C. 3324(d)(2), as amended, advance payment is authorized for subscriptions or other charges for newspapers, magazines, periodicals and other publications for official use of any office under the Government from appropriations available therefore, notwithstanding the provisions of 31 U.S.C. 3324(a). The term "other publications" includes any publication printed, microfilmed, photocopied or magnetically or otherwise recorded for auditory or visual usage.

Part 832 - Contract Financing

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(b) Under the provisions of 31 U.S.C. 1535, advance payment may be made for services and supplies obtained from another Government agency. This includes items such as coupons from the Government Printing Office and Operator Permits, Civilian Defense Radio System, and from the Federal Communications Commission.

(c) Under the provisions of 5 U.S.C. 4109, advance payment may be made for all or any part of the necessary expenses for training Government employees in Government or non-Government facilities. This includes the purchase or rental of books, materials and supplies or services directly related to the training of a Government employee.

**SUBPART 832.5 - PROGRESS PAYMENTS BASED ON COSTS**

**832.502 Preaward matters.**

**832.502-2 Contract finance office clearance.**

Prior approval of actions listed in FAR 32.502-2 will be obtained from the Deputy Assistant Secretary for Acquisition and Materiel Management (95). Requests for approval shall be accompanied by full justification together with the recommendations of the contracting officer.

**SUBPART 832.8 - ASSIGNMENT OF CLAIMS**

**832.805 Procedure.**

**832.805-70 Distribution/notification of assignment of claims.**

(a) The contracting officer will file the retained copy of the notice of assignment and the certified copy of the original instrument of assignment with the General Accounting Office copy of the contract.

(b) Contracting officers will notify field facilities of any recognized assignment of payments under contracts executed in Central Office or by the VA National Acquisition Center divisions in all cases where payment for articles and services under such contracts are certified and approved for payment in the field.

**PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

**TABLE OF CONTENTS**

**SUBPART 836.2—SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION**

|            |   |
|------------|---|
| 836.202    | Specifications.                                       |
| 836.203    | Government estimate of construction costs.            |
| 836.204    | Disclosure of the magnitude of construction projects. |
| 836.206    | Liquidated damages.                                   |
| 836.209    | Construction contracts with architect-engineer firms. |
| 836.213-4  | Notice of award.                                      |
| 836.213-70 | Notice to proceed.                                    |
| 836.270    | Progress payment estimates.                           |
| 836.271    | Final settlement and payment.                         |
| 836.272    | Construction procurement scheduling.                  |

**SUBPART 836.3—SPECIAL ASPECTS OF SEALED BIDDING IN  
CONSTRUCTION CONTRACTING**

|         |                             |
|---------|-----------------------------|
| 836.370 | Offer acceptance procedure. |
|---------|-----------------------------|

**SUBPART 836.5—CONTRACT CLAUSES**

|         |   |
|---------|---|
| 836.500 | Scope of subpart.                             |
| 836.501 | Performance of work by the contractor.        |
| 836.513 | Accident prevention.                          |
| 836.521 | Specifications and drawings for construction. |
| 836.570 | Correspondence.                               |
| 836.571 | Reference to “standards.”                     |
| 836.572 | Government supervision.                       |
| 836.573 | Daily report of workers and materials.        |
| 836.574 | Subcontractors and work conditions.           |
| 836.575 | Schedule of work progress.                    |
| 836.576 | Supplementary labor standards provisions.     |
| 836.577 | Worker’s compensation.                        |
| 836.578 | Changes – supplement.                         |
| 836.579 | Special notes.                                |

**SUBPART 836.6—ARCHITECT-ENGINEER SERVICES**

|           |   |
|-----------|---|
| 836.602   | Selection of firms for architect-engineer contracts.                                      |
| 836.602-1 | Selection criteria.   |
| 836.602-2 | Evaluation boards.  |
| 836.602-4 | Selection authority.  |
| 836.602-5 | Short selection process for contracts not to exceed the simplified acquisition threshold. |
| 836.603   | Collecting data on and appraising firms’ qualifications.                                  |
| 836.606   | Negotiations.   |

**VAAC 97-9 August 29, 2002**

- 836.606-70 General.
- 836.606-71 Architect-engineer's proposal.
- 836.606-72 Contract price.
- 836.606-73 Application of 6-percent architect-engineer fee limitation.

Part 836 - Construction and Architect-Engineer Contracts

---

**PART 836 - CONSTRUCTION AND ARCHITECT-ENGINEER  
CONTRACTS**

**SUBPART 836.2 - SPECIAL ASPECTS OF CONTRACTING FOR  
CONSTRUCTION**

**836.202 Specifications.**

(a) The procedures described in Part 811 shall be applicable to construction specifications.

(b) The use of "brand name or equal" or other restrictive specifications by contract architect-engineers is specifically prohibited without the prior written approval of the contracting officer during the design stage. The contracting officer shall inform prospective architect-engineers of this requirement during the negotiation phase, prior to award of a contract for design.

(c) If it is determined that only one product will meet the Government's minimum needs and the VA will not allow the submission of "equal" products, the bidders must be placed upon notice that the "brand name or equal" provisions of the "Material and Workmanship" clause found at FAR 52.236-5, and any other provision which may authorize the submission of an "equal" product, will not apply. In order to properly alert bidders to this requirement, the contracting officer shall include the clause found at 852.236-90, "Restriction on Submission and Use of Equal Products," in the solicitation.

**836.203 Government estimate of construction costs.**

The overall amount of the Government estimate shall not be disclosed until after award of the contract. After award, the overall amount may then be disclosed upon request.

**836.204 Disclosure of the magnitude of construction projects.**

In lieu of the estimated price ranges described in FAR 36.204, the magnitude of VA projects should be identified in advance notices and solicitations in terms of one of the following price ranges:

- (a) Less than \$25,000;
- (b) Between \$25,000 and \$100,000;
- (c) Between \$100,000 and \$250,000;

Part 836 - Construction and Architect-Engineer Contracts

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- (d) Between \$250,000 and \$500,000;
- (e) Between \$500,000 and \$1,000,000;
- (f) Between \$1,000,000 and \$2,000,000;
- (g) Between \$2,000,000 and \$5,000,000;
- (h) Between \$5,000,000 and \$10,000,000;
- (i) Between \$10,000,000 and \$20,000,000;
- (j) Between \$20,000,000 and \$50,000,000;
- (k) Between \$50,000,000 and \$100,000,000;
- (l) More than \$100,000,000.

(This section has been promulgated as a deviation to the FAR as provided in FAR subpart 1.4.) (Jan. 21, 1988)

**836.206 Liquidated damages.**

Liquidated damage provisions may be included in construction contracts when the criteria of 811.502 is met. If partial performance may be accepted and utilized to the advantage of the Government, the clause substantially as set forth in 852.211-78 will be included in addition to the clause set forth in FAR 52.211-12.

**836.209 Construction contracts with architect-engineer firms.**

When it is considered necessary or advantageous to award a contract for construction of a design-bid-build project, as defined at FAR 36.102, to the firm or person that designed the project, prior approval will be requested from the facility director or manager or, for National Cemetery Administration contracts, the Director, Office of Construction Management, for contracts involving non-recurring maintenance (NRM) funds or from the Chief Facilities Management Officer, Office of Facilities Management, for contracts involving construction funds. Complete justification will be furnished in the request. This section does not apply to design-build contracts, as defined at FAR 36.102.

**836.213-4 Notice of award.**

The contracting officer shall provide the contractor a notice of award (letter of acceptance) for any contract award in excess of \$25,000.



Part 836 - Construction and Architect-Engineer Contracts

---

**836.213-70 Notice to proceed.**

(a) Construction contractors will be given a written "Notice to Proceed" with the work. A letter notice to proceed will normally be sent only after performance and payment bonds and the completed contract forms, where applicable, have been returned by the contractor and are accepted by the contracting officer. If the urgency of the work or other proper reason requires the contractor to begin work immediately, the award letter may include the "Notice to Proceed" with the reservation that payments are contingent upon receipt and approval of the required bonds.

(b) If the contract provides for liquidated damages, the notice to proceed will be sent by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. The notice to proceed will advise the contractor that the work will be completed within \_\_\_\_\_ (insert contract time for completion) calendar days from the date of receipt shown on the certified mail receipt card returned by the post office or on the proof of delivery provided by the delivery service.

(c) If the contract does not provide for liquidated damages, certified mail is not required. Notices to proceed for these contracts will establish a date for completion taking into consideration the time required for the notice to arrive by regular mail.

(d) At the time the notice to proceed is sent to the contractor, a copy will be furnished to the resident engineer or the Chief, Engineering Service. A copy of the notice to proceed will be filed with copy A of the contract. When certified mail or other method of delivery is used, the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service will be attached to the copy of the notice to proceed. Copies of the notice to proceed will be filed with copies C and D of the contract after the date of receipt has been established and indicated thereon.

**:::836.270 Progress payment estimates.**

(a) Progress payment estimates funded from local medical care appropriations shall be in accordance with paragraph (a) of this section or as locally prescribed and agreed upon by cognizant facility Service Chief, i.e., Acquisition and Materiel Management, Fiscal and Engineering.

Part 836 - Construction and Architect-Engineer Contracts

---

(b) *Preparation of voucher.* Progress payment estimates for work completed during the month will be prepared in an original and three copies by the Resident Engineer (or Chief, Engineering Service) at the end of each calendar month unless otherwise provided. Each estimate will be consecutively numbered and will include certification for administrative approval.

(c) *Administrative approval of the field facility contracts.* The contracting officer will sign the original of the progress payment estimate and forward it with a signed copy of the contract progress report on the last workday of the month to the Fiscal activity for accounting and payment. The date the estimate was forwarded to the Fiscal Officer will be entered on the reverse side of VA Form 08-6125, Contract Change Orders.

(d) *Progress reports.* For delegated construction (CASCA) projects, the progress report will be prepared using VA Form 08-6001a, Contract Progress Report. For nonrecurring M&R and all other facility level construction contracts, the VA Form 08-6001a or an equivalent will be used.:::

**:::836.271 Final settlement and payment.**

(a) *Final settlement memorandum.* Except as indicated in paragraph (c) of this section, a final settlement memorandum will be prepared for the approval of the contracting officer. This memorandum will include computations of price changes, time and completion, statement of account, and a recommendation for settlement with the contractor. The final payment voucher, and any letters to the contractor explaining withheld amounts shown in the statement of account will accompany the final settlement memorandum. In preparing the statement of account and final payment voucher, fiscal records will be checked to verify correctness of changes, prior payments, and other fiscal matters.

(b) *Final payment voucher.* The final payment voucher is prepared in the same manner as progress payment estimates except that:

(1) In addition to being consecutively numbered, it will also be labeled "Final Payment," e.g., "Eighth and Final Payment."

(2) After signature and return by the contractor, it is administratively approved by the contracting officer and forwarded with the original of the final settlement memorandum (including a

Part 836 - Construction and Architect-Engineer Contracts

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release of claims in accordance with FAR 52.232-5(f)(3)) to the Fiscal Officer for payment.

(c) *Contracts not exceeding \$10,000.* The final settlement memorandum may be prepared in narrative format indicating the work has been completed and payment is due. The memorandum will include deficiencies or omissions (punch list) and any amount to be withheld. Payment may be made on an invoice submitted by the contractor.

(d) *Notice to surety.* After the final payment voucher has been forwarded to the Fiscal activity, the contracting officer will inform the surety company on the bonds by letter, of the date the contract work was completed and of the total contract price.:::

**:::836.272 Construction procurement scheduling.**

Solicitations for those nonrecurring maintenance projects approved and funded by Central Office in response to field facilities' annual submissions will be developed on a planned basis as early in the fiscal year as practicable considering all engineering factors, and with due regard to the provisions of FAR 14.202-1, regarding bidding time.:::

**:::SUBPART 836.3 - SPECIAL ASPECTS OF SEALED BIDDING IN CONSTRUCTION CONTRACTING:::**

**:::836.370 Offer acceptance procedure.**

(a) The letter of acceptance is required only for contracts in excess of \$10,000. It will be dated and mailed the same date as the date of the contract.

(b) The original of the letter of acceptance will be forwarded to the contractor. Copies of the letter will be filed with copies A and C of the contract (see 804.202-70) and one copy, or the notice of award, will be posted for public information. If SF 1442 is used, the original is forwarded to the fiscal activity and a copy is furnished the contractor.

(c) When acceptance is made, the original of SF 1419, Abstract of Offers--Construction, is filed with the original contract (copy A) in the contracting activity; one copy is filed with each copy of the contract maintained by the Fiscal activity and the resident engineer or the Chief, Engineering Service.:::

**Part 836 - Construction and Architect-Engineer Contracts**

---

**SUBPART 836.5 - CONTRACT CLAUSES**

**836.500 Scope of subpart.**

- (a) The clauses and provisions prescribed in this subpart are set forth for use in fixed-price construction contracts in addition to those in FAR Subpart 52.2.
- (b) Additional clauses and provisions not inconsistent with those in FAR Subparts 36.5 and 52.2 and those prescribed in this subpart are authorized when determined necessary or desirable by the contracting officer, and when approved as provided in subpart 801.4.
- (c) Clauses and provisions inconsistent with those contained in FAR Subparts 36.5 and 52.2 and this subpart, but considered essential to the procurement of Department of Veterans Affairs requirements, shall not be used unless the deviation procedure set forth in subpart 801.4 has been complied with.

**836.501 Performance of work by the contractor.**

The contracting officer shall insert the clause at 852.236-72, Performance of work by the contractor, in solicitations and contracts for construction that contain the FAR clause at 52.236-1, Performance of Work by the Contractor. When the solicitations or contracts include a section entitled "Network Analysis System (NAS)," the contracting officer shall use the clause with its Alternate I.

**836.513 Accident prevention.**

The contracting officer shall insert the clause at 852.236-87, Accident Prevention, in all solicitations that contain the clause at FAR 52.235-13, Accident Prevention, or its Alternate.

**836.521 Specifications and drawings for construction.**

The contracting officer shall insert the clause at 852.236-71, Specifications and drawings for construction, in solicitations and contracts for construction that include the FAR clause at 52.236-21, Specifications and Drawings for Construction.

**836.570 Correspondence.**

The contracting officer shall insert the clause at 852.236-76, Correspondence, in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

**Part 836 - Construction and Architect-Engineer Contracts**

---

**836.571 Reference to “standards.”**

The contracting officer shall insert the clause at 852.236-77, Reference to “standards,” in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

**836.572 Government supervision.**

The contracting officer shall insert the clause at 852.236-78, Government supervision, in solicitations and contracts for construction expected to exceed the micro-purchase threshold.

**836.573 Daily report of workers and materials.**

The contracting officer shall insert the clause at 852.236-79, Daily report of workers and materials, in solicitations and contracts for construction expected to exceed the simplified acquisition threshold. The contracting officer may, when in the best interest of the Government, insert the clause in solicitations and contracts for construction when the contract amount is expected to be at or below the simplified acquisition threshold.

**836.574 Subcontractors and work coordination.**

The contracting officer shall insert the clause at 852.236-80, Subcontracts and work coordination, in solicitations and contracts for construction expected to exceed the micro-purchase threshold. When the solicitations or contracts are for new construction work with complex mechanical-electrical work, the contracting officer may use the clause with its Alternate I.

**836.575 Schedule of work progress.**

The contracting officer shall insert the clause at 852.236-84, Schedule of work progress, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold and that do not contain a section entitled “Network Analysis System (NAS).”

**836.576 Supplementary labor standards provisions.**

The contracting officer shall insert the clause at 852.236-85, Supplementary labor standards provisions, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

Part 836 - Construction and Architect-Engineer Contracts

---

**836.577 Worker's compensation.**

The contracting officer shall insert the clause at 852.236-86, Worker's compensation, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

**836.578 Changes – supplement.**

(a) The contracting officer shall insert the clause at 852.236-88, Contract changes - supplement, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

(b) When negotiated changes exceed \$500,000, paragraph (a) of the clause at 852.236-88 will apply. Because paragraph (a) does not provide ceiling rates for indirect expenses, the contractor must supply cost breakdowns and other supporting data on its rates for indirect expenses as part of its price proposal. The contracting officer must negotiate the rates for indirect expenses with the contractor and may request an audit in accordance with FAR 15.404-2. When the negotiated change will be \$500,000 or less, paragraph (b) of the clause at 852.236-88 will apply.

(c) As provided in FAR 15.403-4, proposals exceeding the cost or pricing data threshold shall be accompanied by certificates of current cost or pricing data. The contracting officer, if authorized by the head of the contracting activity, may require the submission of cost or pricing data for proposals valued at less than the cost or pricing data threshold specified in FAR 15.403-4(a)(1) and may require that the data be certified in accordance with FAR 15.403-4(a)(2).

(d) It is emphasized that the indirect cost rates in paragraph (b) of the clause at 852.236-88, for changes costing \$500,000 or less, are ceiling rates only and the contracting officer must negotiate the indirect expense rates within the ceiling limitations. The clause is a result of an approved FAR deviation pursuant to subpart 801.4.

**836.579 Special notes.**

The contracting officer shall insert the clause at 852.236-91, Special notes, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

**Part 836 - Construction and Architect-Engineer Contracts**

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**SUBPART 836.6 - ARCHITECT-ENGINEER SERVICES**

**836.602 Selection of forms for architect-engineer contracts.**

**836.602-1 Selection criteria.**

In addition to the evaluation criteria set forth in FAR 36.602-1, the board will consider the factors set forth in this section as they apply to the project or purpose of the selection. Values will be assigned to each factor in determining the relative qualifications of the firms identified as qualified through the preselection process. The values may be confirmed or adjustments may be made as a result of the discussions.

- (a) Reputation and standing of the firm and its principal officials with respect to professional performance, general management, and cooperativeness.
- (b) Record of significant claims against the client because of improper or incomplete architectural and engineering services.
- (c) Specific experience and qualifications of personnel proposed for assignment to the project and their record of working together as a team.

**836.602-2 Evaluation boards.**

Central Office architect-engineer contractors will be selected by the board appointed by the Chief Facilities Management Officer, Office of Facilities Management. Field facility architect-engineer contractors will be selected by the board appointed by the facility director.

- (a) The evaluation board for the Office of Facilities Management will be chaired by the Director, A/E Evaluation and Program Support Service. The Project Director or Project Manager will be designated to act as Chair when necessary. The board's members, as appointed by the Chief Facilities Management Officer, Office of Facilities Management, will include the appropriate Project Manager and as many qualified professional architects or engineers from the Office of Facilities Management technical services as may be considered appropriate for the particular project. Additional members from the Office of Facilities Management or from other VA administrations and staff offices will be designated for projects when appropriate.

**Part 836 - Construction and Architect-Engineer Contracts**

---

(b) The evaluation board for a VA field facility will consist of no less than two members, one of whom will be the head of the contracting activity (HCA) (or the senior contracting officer at a facility if there is no HCA on site) and the other the Chief, Engineering Service, or their alternates. Where a facility has two or more engineers on its staff, an additional engineer will be appointed to the board. The chairperson of the board will be the senior engineer.

(c) The evaluation board for National Cemetery Administration (NCA) contracts will be appointed by the Director, Office of Construction Management, and will consist of no less than three members, one of whom will serve as the board's Chair, and one of whom will be an NCA senior level contracting officer.

**836.602-4 Selection authority.**

The Chief Facilities Management Officer, Office of Facilities Management, (for Central Office contracts), the Director, Office of Construction Management (for National Cemetery Administration contracts), and the facility director (for field facility contracts), or persons acting in those capacities, are designated as the approving officials for the recommendations of the evaluation boards.

**836.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.**

Either of the procedures provided in FAR 36.602-5 may be used to select firms for architect-engineer contracts not expected to exceed the simplified acquisition threshold.

**836.603 Collecting data on and appraising firms' qualifications.**

The Chief Facilities Management Officer, Office of Facilities Management, for Central Office; the Director, Office of Construction Management, for National Cemetery Administration acquisitions; and the Chief, Engineering Service, for field facilities, are responsible for collecting Standard Forms 254 and 255 and for maintaining a data file on architect-engineer qualifications.

**836.606 Negotiations.**

**836.606-70 General.**

To assure that the fee limitation is not violated, the contracting officer will maintain suitable records to be able to isolate the amount in the total fee to which the 6 percent limitation applies.



Part 836 - Construction and Architect-Engineer Contracts

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**836.606-71 Architect-engineer's proposal.**

The use of VA Form 08-6298, Architect-Engineer Fee Proposal, is mandatory for obtaining the proposal and supporting cost or pricing data from the contractor and subcontractor in the negotiation of all architect-engineer contracts for design services when the contract price is estimated to be \$50,000 or over. In obtaining architect-engineer services for research study, seismic study, master planning study, construction management and other related services contracts, VA Form 08-6298 shall also be used but supplemented or modified as needed for the particular project type.

**836.606-72 Contract price.**

Where negotiations with the top-rated firm are unsuccessful, the contracting officer will terminate the negotiations and undertake negotiations with the firm next in order of preference after authorization by the Chief Facilities Management Officer, Office of Facilities Management, or the facility director. Recommendation for award of the contract at the negotiated fee, will be submitted with a copy of the negotiation memorandum prepared in accordance with FAR 15.406-3 and, whenever a field pricing report has been received, to the Chief Facilities Management Officer, Office of Facilities Management, or the facility director, as appropriate.

**836.606-73 Application of 6-percent architect-engineer fee limitation.**

(a) The 6-percent fee limitation does not apply to the following architect or engineer services:

(1) Investigative services including but not limited to:

- (i) Determination of program requirements including schematic or preliminary plans and estimates.
- (ii) Determination of feasibility of proposed project.
- (iii) Preparation of measured drawings of existing facility.
- (iv) Subsurface investigation.
- (v) Structural, electrical, and mechanical investigation of existing facility.
- (vi) Surveys: Topographic, boundary, utilities, etc.

**Part 836 - Construction and Architect-Engineer Contracts**

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(2) Special consultant services not normally available in organizations of architects or engineers not specifically applied to the actual preparation of working drawings or specifications of the project for which the service are required.

(3) Other:

(i) Reproduction of approved designs through models, color renderings, photographs, or other presentation media.

(ii) Travel and per diem allowances other than those required for the development and review of working drawings and specifications.

(iii) Supervision or inspection of construction, review of shop drawings or samples, and other services performed during the construction phase.

(iv) All other services that are not integrally a part of the production and delivery of plans, designs, and specifications.

(4) The cost of reproducing drawings and specifications for bidding and their distribution to prospective bidders and plan file rooms.

(b) The total cost of the architect or engineer services contracted for may not exceed 6 percent of the estimated cost of the construction project plus the estimated cost of related services and activities such as those shown in paragraph (a) of this section. To support project submissions, VA Form 10-1193, Application for Health Care Facility Project, and VA Form 10-6238, EMIS Construction Program-Estimate Worksheet, will be used and the proposed technical services shown where necessary and applicable.

**PART 846—QUALITY ASSURANCE**

**TABLE OF CONTENTS**

**SUBPART 846.3—CONTRACT CLAUSES**

- 846.302-70 Inspection.
- | 846.312 Construction contracts.

**SUBPART 846.4—GOVERNMENT CONTRACT QUALITY ASSURANCE**

- 846.408-70 Inspection of subsistence.
- 846.408-71 Waiver of USDA inspection and specifications.
- 846.470 Use of commercial organizations for inspections and grading services.
- 846.471 Determination authority.
- 846.472 Inspection of repairs for properties under the Loan Guaranty and Direct Loan Programs.
- 846.472-1 Repairs of \$1,000 or less.
- 846.472-2 Repairs in excess of \$1,000.

**SUBPART 846.7—WARRANTIES**

- | 846.710 Construction contracts.
- 846.710-70 Special warranties.
- 846.710-71 Warranty for construction—guarantee period services.

**SUBPART 846.70—QUALITY IMPROVEMENT REPORTS**

- 846.7001 Scope.
- 846.7002 Initiation.
- 846.7003 Reporting and processing medical materiel complaints/quality improvement report file.
- 846.7004 Quality complaints.
- 846.7004-1 Locally purchased items.
- 846.7004-3 VA and all other items.
- 846.7004-4 Procurement action pending resolution of quality complaints.
- 846.7005 New item.
- 846.7005-1 Distribution and VA National Acquisition Center action.
- 846.7006 Similar item.
- 846.7007 Emergency procedures.
- 846.7008 Program review.

**SUBPART 846.71—PRODUCTION EVALUATION REPORTS**

- 846.7101 General.
- 846.7102 Submission of reports.

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Part 846 - Quality Assurance

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**PART 846 - QUALITY ASSURANCE**

**SUBPART 846.3 – CONTRACT CLAUSES**

**846.302-70 Inspection.**

Contracts for property will include the clause 852.211-72(a), “Rejected Goods,” except that contracts for packinghouse, dairy products, bread and baker products, and fresh and frozen fruits and vegetables will include the clause prescribed in 852.211-72(b), “Rejected Goods.”

**846.312 Construction contacts.**

The contracting officer shall insert the clause at 852.236-74, Inspection of construction, in solicitations and contracts for construction that include the FAR clause at 52.246-12, Inspection of Construction.

**SUBPART 846.4 - GOVERNMENT CONTRACT QUALITY ASSURANCE**

**846.408-70 Inspection of subsistence.**

(a) The contracting officer will determine at the time of issuance of the solicitation whether inspection for specification compliance will be made:

- (1) Prior to shipment by representatives of the U.S. Department of Agriculture (USDA) or the Department of Commerce, or
- (2) At the time of delivery by personnel of the purchasing activity.

The place of inspection will be indicated in the solicitation.

(b) Since the requirement for USDA or Department of Commerce inspections and certifications result in additional contractor costs which may be ultimately reflected in bid prices, the contracting officer, in consultation with the Chief, Nutrition and Food Service, must evaluate the need for such inspections. The evaluation shall include the following:

- (1) The quality assurance already provided by other mandatory inspection systems;
- (2) The proposed suppliers’ own quality control system;
- (3) Experience with the proposed suppliers;

Part 846 - Quality Assurance

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(4) The feasibility of pre-qualifying suppliers' quality assurance systems and subsequently waiving certifications for future solicitations; and

(5) The cost of the inspections.

(c) When either the USDA or the Department of Commerce is indicated as the inspection activity, the solicitation will also provide that the contractor is responsible for:

(1) Arranging and paying for inspection services.

(2) Obtaining from the inspection activity a certificate indicating the product complies with specifications. Such certificate, or copy, should accompany the shipment or be furnished to the receiving installation prior to shipment. The contractor shall notify the installation when the certificate is not immediately available.

(3) Seeing that acceptable products are covered by an inspection agency checkloading certificate or stamped by the inspector as prescribed by the contracting officer. Products not so identified shall be rejected.

(4) Furnishing samples for inspection at his/her expense.

(5) Indicating the address where inspection will be made.

(d) The contracting officer will furnish a copy of the purchase document to the inspecting activity.

**846.408-71 Waiver of USDA inspection and specifications.**

(a) Contracting officers may purchase butter; cheese (except cottage cheese); sausage; meat food products\*; bacon, smoked; and bacon, Canadian style, without reference to the specifications in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, Publication No. C8900-SL, and the USDA inspection requirements, when the amount of an item to be purchased will not exceed 500 pounds per delivery. When these items are procured together with items that are not exempt, the solicitation shall include the following:

Items . . . are not required to be in accordance with the specifications contained in Part IV of the Federal Supply Catalog,

Part 846 - Quality Assurance

---

Stock List, FSC Group 89, Subsistence, Publication No. C8900-SL, and the special USDA inspection is not required. Inspection for quality and condition will be made by VA upon delivery at destination. These items are, however, subject to the quality controls stated herein.

(b) As appropriate, the following statements shall be included in each invitation for bid, request for proposal or purchase order:

(1) Butter. This product must be graded by the USDA and labeled "Grade A" or the grade specified herein.

(2) Sausage and meat food products:

(i) This product must be a high commercial product and shall have been prepared in a federally inspected plant and bear the USDA establishment number stamp which evidences that it is sound, healthful, wholesome and fit for human consumption; and

(ii) This product must bear a label complying with the Federal Food, Drug and Cosmetic Act which requires that all ingredients be listed according to the order of their predominance.

(3) Bacon, smoked; and bacon, Canadian style. This product must be a high commercial product and shall have been prepared in a federally inspected plant and bear the USDA establishment number stamp which evidences that it is sound, healthful, wholesome, and fit for human consumption.

(c) When using a "brand name or equal" purchase description, every brand name item that is known to be acceptable and available in the area will be listed.

*\*Meat food products shall mean processed foods containing meat in substantial proportion and other listed ingredients including seasoning, e.g., frankfurters, coldcuts. Whole or prefabricated meats, e.g., pork chops, hamburger, are considered meats, not meat food products.*

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Part 846 - Quality Assurance

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Part 846 - Quality Assurance

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**846.470 Use of commercial organizations for inspections and grading services.**

Commercial organizations may be used for inspection and grading services when it is determined that the results of a technical inspection or grading are dependent upon the application of scientific principles or specialized techniques, and it is further determined that:

- (a) The Department of Veterans Affairs is unable to employ the personnel qualified to properly perform the services and is unable to locate another Federal agency capable of providing the service.
- (b) The inspection or grading results issued by a private organization are essential to verify the acceptance or rejection of a special commodity.
- (c) The services may be performed without direct Government supervision.

**846.471 Determination authority.**

The determinations required in 846.470 will be made by:

- (a) The Chief Facilities Management Officer, Office of Facilities Management, for those items and services for which purchase authority has been assigned to him/her.
- (b) The Director, Veterans Canteen Service, for those items and services purchased, or contracted for, by the Veterans Canteen Service (except those items purchased from Department of Veterans Affairs supply sources).
- (c) The Deputy Assistant Secretary for Acquisition and Materiel Management for all other supplies, equipment and services.

**846.472 Inspection of repairs for properties under the Loan Guaranty and Direct Loan Programs.**

Final inspection will be made of all repair programs upon completion. In addition such intermediate or progress inspections will be made on extensive or technical jobs as specified in the contract.

Part 846 - Quality Assurance

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**846.472-1 Repairs of \$1,000 or less.**

(a) Generally, inspections required will be made by the management broker. If the property has not been assigned to a management broker or if it has been determined that the nature of the repairs requires supervision by a technician, the inspection will be made by a qualified fee or staff inspector.

(b) There is no form prescribed for this inspection but VA Form 26-1839, Compliance Inspection Report, may be used if desired. Regardless of the form in which the report is submitted, it will be in sufficient detail to identify the contractor, property, and the repair program and to enable the contracting officer to make a determination that the work is being performed satisfactorily or completed in accordance with the terms of the contract.

**846.472-2 Repairs in excess of \$1,000.**

(a) The final inspection and any intermediate or progress inspections on repairs exceeding \$1,000 will be made by a qualified fee or staff inspector. If a management broker is qualified to supervise major repairs, he/she may be authorized to conduct the inspections.

(b) Report of inspections will be made on VA Form 26-1839, Compliance Inspection Report. The form will be completed to identify the property, contractor, and repair program and will also include such detailed information to enable the contracting officer to make a determination that the work is being performed satisfactorily or that it has been completed in accordance with the terms of the contract. Any deficiencies noted will be itemized and explained in detail.

**SUBPART 846.7 – WARRANTIES**

**846.710 Construction contracts.**

Contracting officers shall insert the FAR clause at 52.246-21, Warranty of Construction, in solicitations and contracts for construction that are expected to exceed the micro-purchase threshold.

**846.710-70 Special warranties.**

The contracting office shall insert the clause at 852.246-1, Special warranties, in solicitations and contracts for construction that include the FAR clause at 52.246-21, Warranty for Construction.

Part 846 - Quality Assurance

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**846.710-71 Warranty for construction – guarantee period services.**

The contracting office shall insert the clause at 852.246-2, Warranty for construction – guarantee period services, in solicitations and contracts for construction that include the FAR clause at 52.246-21, Warranty for Construction, and also include guarantee period services.

**:::SUBPART 846.70 - QUALITY IMPROVEMENT REPORTS:::**

**:::846.7001 Scope.**

The purpose of this subpart is to provide users with a positive means to report deficiencies, recommend improvements, introduce new items and report similar items required from other than the highest priority source. SF 380, Reporting and Processing Medical Materiel Complaints/Quality Improvements Report, will normally be used for this purpose. This form is designed to easily identify the purpose of the submission by providing blocks to be checked for a quality complaint, new item or similar item. This procedure increases the efficiency of the supply system by utilizing user experience and expertise.:::

**:::846.7002 Initiation.**

Any using activity may initiate SF 380 when appropriate or at the request of the Chief, Acquisition and Materiel Management Service. The original and one copy will be forwarded to the Chief, Acquisition and Materiel Management Service. Additionally, the Chief, Acquisition and Materiel Management Service, may initiate SF 380 based on other means of communications or personal knowledge.:::

**:::846.7003 Reporting and processing medical materiel complaints/quality improvement report file.**

Reports will be serially numbered by the procurement activity on a fiscal year basis and one copy retained and filed in numerical sequence. The file will be annotated or supplemented by subsequent actions and the initiator advised on the findings or results of the report.:::

**:::846.7004 Quality complaint**

- (a) This item within block 1B will be used to report characteristics which cause failure or inadequacy, such as design, quality or performance of the components or ingredients, safety features, etc. This report will be submitted only on items in use at the station.

Part 846 - Quality Assurance

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(b) The recommendations will specify the changes necessary to the unsatisfactory item to make it satisfactory. If, as a part of the recommended corrective action, it is proposed that only a single brand name product will remedy the situation, the specific features available on that product and their relation to the functional requirements must be stated. Identification of a brand name product will not be considered as a request to stock or standardize a proprietary item.

(c) The Chief, Acquisition and Materiel Management Service, or subordinate, will conduct an investigation to attempt to determine the cause of the complaint. In conjunction with the validation, the extent of the defect or discrepancy should also be determined. Should the defect or discrepancy be determined to be hazardous, then those instructions outlined in VA manual MP-2, subchapter E, subpart 108-25.53, Potentially Hazardous Products, should be followed. SF 380 will not be used to report hazardous products. Particular attention will be paid to the inspection function while conducting the investigation. (Experience has shown that many quality complaints are related to inadequate inspection.) Results of any local investigation shall be provided.

(d) The additional remarks furnished by the Chief, Acquisition and Materiel Management Service, will specifically state the action taken by the station or requested of the National Acquisition Center or GSA to resolve the problem. For example:

- (1) The item is being used as intended to be used but suggested changes or improvements should be incorporated in revised specifications,
- (2) the item cannot be used and replacement is necessary,
- (3) the item was obtained from contract, and is being returned to or corrected by the contractor,
- (4) return to the appropriate depot is requested, or
- (5) corrective action (specify) is requested or is being or has been taken by the station.

(e) All efforts should be made to retain samples of the item in question until resolution of the complaint.

(f) This report will not be used for discrepancies in shipments (see VA manual MP-2, subchapter G, subpart 108-40.7).:::

**PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**TABLE OF CONTENTS**

**SUBPART 852.1—INSTRUCTIONS FOR USING PROVISIONS  
AND CLAUSES**

|         |  |
|---------|--|
| 852.101 | Using Part 852.                                    |
| 852.102 | Incorporating provisions and clauses by reference. |

**SUBPART 852.2—TEXTS OF PROVISIONS AND CLAUSES**

|            |   |
|------------|---|
| 852.203-71 | Display of VA hotline poster  |
| 852.207-70 | Report of employment under commercial activities.                                   |
| 852.209-70 | Organizational conflicts of interest.   |
| 852.211-70 | Requirements for operating and maintenance manuals.                                 |
| 852.211-71 | Guarantee clause.   |
| 852.211-72 | Inspection.   |
| 852.211-73 | Frozen processed foods.   |
| 852.211-74 | Telecommunications equipment.   |
| 852.211-75 | Technical industry standards.   |
| 852.211-76 | Noncompliance with packaging, packing and/or marking requirements.                  |
| 852.211-77 | Brand name or equal.  |
| 852.211-78 | Liquidated damages.   |
| 852.214-70 | Caution to bidders—bid envelopes.   |
| 852.214-71 | Alternate items.  |
| 852.214-73 | Bid samples.  |
| 852.216-70 | Estimated quantities for requirements contracts.                                    |
| 852.219-70 | Veteran-owned small business.   |
| 852.222-70 | Contract Work Hours and Safety Standards Act—nursing home care contract supplement. |
| 852.228-70 | Bond premium adjustment.  |
| 852.229-70 | Purchases from patient's funds.   |
| 852.229-71 | Purchases for patients using Government funds and/or personal funds of patients.    |
| 852.233-70 | Protest content.  |
| 852.233-71 | Alternate Protest Procedure.  |
| 852.236-71 | Specifications and drawings for construction.                                       |
| 852.236-72 | Performance of work by the contractor.  |
| 852.236-74 | Inspection of construction.   |
| 852.236-76 | Correspondence.   |
| 852.236-77 | Reference to "standards."   |
| 852.236-78 | Government supervision.   |
| 852.236-79 | Daily report of workers and materials.  |
| 852.236-80 | Subcontracts and work coordination.   |

**VAAC 97-9 August 29, 2002**

|  |            |  |
|--|------------|--|
|  | 852.236-82 | Payments under fixed-price construction contracts (without NAS).                     |
|  | 852.236-83 | Payments under fixed-price construction contracts (including NAS).                   |
|  | 852.236-84 | Schedule of work progress.   |
|  | 852.236-85 | Supplementary labor standards provisions.  |
|  | 852.236-86 | Worker's compensation.   |
|  | 852.236-87 | Accident prevention.   |
|  | 852.236-88 | Contract changes – supplement.   |
|  | 852.236-89 | Buy American Act.  |
|  | 852.236-90 | Restriction on submission and use of equal products.                                 |
|  | 852.236-91 | Special notes.   |
|  | 852.237-7  | Indemnification and Medical Liability Insurance.                                     |
|  | 852.237-70 | Contractor responsibilities.   |
|  | 852.237-71 | Indemnification and insurance (vehicle and aircraft service contracts).              |
|  | 852.246-1  | Special warranties.  |
|  | 852.246-2  | Warranty for construction – guarantee period services.                               |
|  | 852.247-70 | Transportation provision for bid evaluation.   |
|  | 852.252-1  | Provisions or clauses requiring completion by the offeror or prospective contractor. |
|  | 852.270-1  | Representatives of contracting officers.   |
|  | 852.270-2  | Bread and bakery products.   |
|  | 852.270-3  | Purchase of shellfish.   |
|  | 852.270-4  | Commercial advertising.  |
|  | 852.271-70 | Services provided eligible beneficiaries.  |
|  | 852.271-71 | Visits to Department of Veterans Affairs guidance centers.                           |
|  | 852.271-72 | Time spent by counselee in counseling process.                                       |
|  | 852.271-73 | Use and publication of counseling results.   |
|  | 852.271-74 | Inspection.  |
|  | 852.271-75 | Extension of contract period.  |

**852.233-71 Alternate Protest Procedure.**

As prescribed in 833.106 of this chapter, insert the following provision in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold:

**ALTERNATE PROTEST PROCEDURE (JAN 1998)**

As an alternative to filing a protest with the contracting officer, an interested party may file a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420, or, for solicitations issued by the Office of Facilities Management, the Chief Facilities Management Officer, Office of Facilities Management, 810 Vermont Avenue, NW, Washington, DC 20420. The protest will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

(End of Provision)

**852.236-71 Specifications and drawings for construction.**

As prescribed in 836.521, insert the following clause:

**SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (JUL 2002)**

The clause entitled "Specifications and Drawings for Construction" in FAR 52.236-21 is supplemented as follows:

- (a) The contracting officer's interpretation of the drawings and specifications will be final, subject to the disputes clause.
- (b) Large scale drawings supersede small scale drawings.
- (c) Dimensions govern in all cases. Scaling of drawings may be done only for general location and general size of items.
- (d) Dimensions shown of existing work and all dimensions required for work that is to connect with existing work shall be verified by the contractor by actual measurement of the existing work. Any work at variance with that specified or shown in the drawings shall not be performed by the contractor until approved in writing by the contracting officer.

(End of Clause)

**852.236-72 Performance of work by the contractor.**

As prescribed in 836.501, insert the following clause:

**PERFORMANCE OF WORK BY THE CONTRACTOR (JUL 2002)**

The clause entitled "Performance of Work by the Contractor" in FAR 52.236-1 is supplemented as follows:

(a) Contract work accomplished on the site by laborers, mechanics, and foreman/forewomen on the contractor's payroll and under his/her direct supervision shall be included in establishing the percent of work to be performed by the contractor. Cost of material and equipment installed by such labor may be included. The work by contractor's executive, supervisory and clerical forces shall be excluded in establishing compliance with the requirements of this clause.

(b) The contractor shall submit, simultaneously with the schedule of costs required by the Payments under Fixed-Price Construction Contracts clause of the contract, a statement designating the branch or branches of contract work to be performed with his/her forces. The approved schedule of costs will be used in determining the value of a branch or branches, or portions thereof, of the work for the purpose of this article.

(c) If, during the progress of work hereunder, the contractor requests a change in the branch or branches of the work to be performed by his/her forces and the contracting officer determines it to be in the best interests of the Government, the contracting officer may, at his/her discretion, authorize a change in such branch or branches of said work. Nothing contained herein shall permit a reduction in the percentage of work to be performed by the contractor with his/her forces, it being expressly understood that this is a contract requirement without right or privilege of reduction.

(d) In the event the contractor fails or refuses to meet the requirement of the FAR clause at 52.236-1, it is expressly agreed that the contract price will be reduced by 15 percent of the value of that portion of the percentage requirement that is accomplished by others. For the purpose of this clause, it is agreed that 15 percent is an acceptable estimate of the contractor's overhead and profit, or mark-up, on that portion of the work which the contractor fails or refuses to perform, with his/her own forces, in accordance with the FAR clause at 52.236-1.

(End of Clause)



Part 852 - Solicitation Provisions and Contract Clauses

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| *Alternate I (JUL 2002).* For requirements which include Network Analysis System (NAS), substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

(b) The contractor shall submit, simultaneously with the cost per activity of the construction schedule required by Section 01311, NETWORK ANALYSIS SYSTEM, a responsibility code for all activities of the network for which the contractor's forces will perform the work. The cost of these activities will be used in determining the portions of the total contract work to be executed by the contractor's forces for the purpose of this article.

| (c) If, during progress of work hereunder, the contractor requests a change  
| in activities of work to be performed by the contractor's forces and the  
| contracting officer determines it to be in the best interest of the  
| Government, the contracting officer may, at his or her discretion,  
| authorize a change in such activities of said work.

**852.236-74 Inspection of construction.**

| As prescribed in 846.312, insert the following clause:

**INSPECTION OF CONSTRUCTION (JUL 2002)**

| The clause entitled "Inspection of Construction" in FAR 52.246-12 is supplemented as follows:

(a) Inspection of materials and articles furnished under this contract will be made at the site by the resident engineer, unless otherwise provided for in the specifications.

(b) Final inspection will not be made until the contract work is ready for beneficial use or occupancy. The contractor shall notify the contracting officer, through the resident engineer, fifteen (15) days prior to the date on which the work will be ready for final inspection.

(End of Cause)

**852.236-76 Correspondence.**

As prescribed in 836.570, insert the following clause:

**CORRESPONDENCE (APR 1984)**

All correspondence relative to this contract shall bear Specification Number, Project Number, Department of Veterans Affairs Contract Number, title of project and name of facility.

(End of Clause)

**852.236-77 Reference to "standards."**

As prescribed in 836.571, insert the following clause:

**REFERENCE TO "STANDARDS" (JUL 2002)**

Any materials, equipment, or workmanship specified by references to number, symbol, or title of any specific Federal, Industry or Government Agency Standard Specification shall comply with all applicable provisions of such standard specifications, except as limited to type, class or grade, or modified in contract specifications. Reference to "Standards" referred to in the contract specifications, except as modified, shall have full force and effect as though printed in detail in specifications.

(End of Clause)

**852.236-78 Government supervision.**

As prescribed in 836.572, insert the following clause:

**GOVERNMENT SUPERVISION (APR 1984)**

(a) The work will be under the direction of the Department of Veterans Affairs contracting officer, who may designate another VA employee to act as resident engineer at the construction site.

(b) Except as provided below, the resident engineer's directions will not conflict with or change contract requirements.

**Part 852 - Solicitation Provisions and Contract Clauses**

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(c) Within the limits of any specific authority delegated by the contracting officer, the resident engineer may, by written direction, make changes in the work. The contractor shall be advised of the extent of such authority prior to execution of any work under the contract.

(End of Clause)

**852.236-79 Daily report of workers and materials.**

As prescribed in 836.573, insert the following clause:

**DAILY REPORT OF WORKERS AND MATERIAL (APR 1984)**

The contractor shall furnish to the resident engineer each day a consolidated report for the preceding work day in which is shown the number of laborers, mechanics, foremen/forewomen and pieces of heavy equipment used or employed by the contractor and subcontractors. The report shall bear the name of the firm, the branch of work which they perform such as concrete, plastering, masonry, plumbing, sheet metal work, etc. The report shall give a breakdown of employees by crafts, location where employed, and work performed. The report shall also list materials delivered to the site on the date covered by the report.

(End of Clause)

**852.236-80 Subcontracts and work coordination.**

As prescribed in 836.574, insert the following clause:

**SUBCONTRACTS AND WORK COORDINATION (APR 1984)**

(a) Nothing contained in this contract shall be construed as creating any contractual relationship between any subcontractor and the Government. Divisions or sections of specifications are not intended to control the contractor in dividing work among subcontractors, or to limit work performed by any trade.

(b) The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and of the subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers.

(c) The Government or its representatives will not undertake to settle any differences between the contractor and subcontractors or between subcontractors.

**Part 852 - Solicitation Provisions and Contract Clauses**

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(d) The Government reserves the right to refuse to permit employment on the work or require dismissal from the work of any subcontractor who, by reason of previous unsatisfactory work on Department of Veterans Affairs projects or for any other reason, is considered by the contracting officer to be incompetent or otherwise objectionable.

(End of Clause)

*Alternate I (JUL 2002).* For new construction work with complex mechanical-electrical work, the following paragraph relating to work coordination may be substituted for paragraph (b) of the basic clause:

(b) The contractor shall be responsible to the Government for acts and omissions of his/her own employees, and subcontractors and their employees. The contractor shall also be responsible for coordination of the work of the trades, subcontractors, and material suppliers. The contractor shall, in advance of the work, prepare coordination drawings showing the location of openings through slabs, the pipe sleeves and hanger inserts, as well as the location and elevation of utility lines, including, but not limited to, conveyor systems, pneumatic tubes, ducts, and conduits and pipes 2 inches and larger in diameter. These drawings, including plans, elevations, and sections as appropriate shall clearly show the manner in which the utilities fit into the available space and relate to each other and to existing building elements. Drawings shall be of appropriate scale to satisfy the previously stated purposes, but not smaller than 3/8-inch scale. Drawings may be composite (with distinctive colors for the various trades) or may be separate but fully coordinated drawings (such as sepias or photographic paper reproducibles) of the same scale. Separate drawings shall depict identical building areas or sections and shall be capable of being overlaid in any combination. The submitted drawings for a given area of the project shall show the work of all trades which will be involved in that particular area. Six complete composite drawings or six complete sets of separate reproducible drawings shall be received by the Government not less than 20 days prior to the scheduled start of the work in the area illustrated by the drawings, for the purpose of showing the contractor's planned methods of installation. The objectives of such drawings are to promote carefully planned work sequence and proper trade coordination, in order to assure the expeditious solutions of problems and the installation of lines and equipment as contemplated by the contract documents while avoiding or minimizing additional costs to the contractor and to the Government. In the event the contractor, in coordinating the various installations and in planning the method of

**Part 852 - Solicitation Provisions and Contract Clauses**

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installation, finds a conflict in location or elevation of any of the utilities with themselves, with structural items or with other construction items, he/she shall bring this conflict to the attention of the contracting officer immediately. In doing so, the contractor shall explain the proposed method of solving the problem or shall request instructions as to how to proceed if adjustments beyond those of usual trades coordination are necessary. Utilities installation work will not proceed in any area prior to the submission and completion of the Government review of the coordinated drawings for that area, nor in any area in which conflicts are disclosed by the coordination drawings until the conflicts have been corrected to the satisfaction of the contracting officer. It is the responsibility of the contractor to submit the required drawings in a timely manner consistent with the requirements to complete the work covered by this contract within the prescribed contract time.

**852.236-82 Payments under fixed-price construction contracts (without NAS).**

As prescribed in 832.111, insert the following clause in contracts that do not contain a section entitled "Network Analysis System (NAS)":

**PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS  
(APR 1984)**

The clause entitled "Payments Under Fixed-Price Construction Contracts" in FAR 52.232-5 is implemented as follows:

(a) Retainage:

(1) The contracting officer may retain funds:

- (i) Where performance under the contract has been determined to be deficient or the contractor has performed in an unsatisfactory manner in the past; or
- (ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

(2) Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following:

Part 852 - Solicitation Provisions and Contract Clauses

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- (i) Unsatisfactory progress as determined by the contracting officer;
- (ii) Failure to meet schedule in Schedule of Work Progress;
- (iii) Failure to present submittals in a timely manner; or
- (iv) Failure to comply in good faith with approved subcontracting plans, certifications or contract requirements.

(3) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this subparagraph shall be construed as limiting the contracting officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The contractor shall submit a schedule of cost to the contracting officer for approval within 30 calendar days after date of receipt of notice to proceed. Such schedule will be signed and submitted in triplicate. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed. This schedule shall show cost by the branches of work for each building or unit of the contract, as instructed by the resident engineer.

- (1) The branches shall be subdivided into as many subbranches as are necessary to cover all component parts of the contract work.
- (2) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit the original estimate sheets or other information to substantiate the detailed makeup of the schedule.
- (3) The sum of the subbranches, as applied to each branch, shall equal the total cost of such branch. The total costs of all branches shall equal the contract price.
- (4) Insurance and similar items shall be prorated and included in the cost of each branch of the work.

(5) The cost schedule shall include separate cost information for the systems listed below. The percentages listed below are proportions of the cost listed in contractor's cost schedule and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed. Payment of the listed percentages will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

| System  | Percent |
|---|---------|
| Pneumatic tube system.....  | 10      |
| Incinerators (medical waste and trash).....                           | 5       |
| Sewage treatment plant equipment.....                                 | 5       |
| Water treatment plant equipment.....                                  | 5       |
| Washers (dish, cage, glass, etc.).....                                | 5       |
| Sterilizing equipment.....  | 5       |
| Water distilling equipment.....                                       | 5       |
| Prefab temperature rooms (cold, constant temperature)...              | 5       |
| Entire air conditioning system (Specified under<br>600 Sections)..... | 5       |
| Entire boiler plant system (Specified under<br>700 Sections).....     | 5       |
| General supply conveyors.....   | 10      |
| Food service conveyors.....   | 10      |
| Pneumatic soiled linen and trash system.....                          | 10      |
| Elevators and dumbwaiters.....  | 10      |
| Materials transport system.....                                       | 10      |
| Engine-generator system.....  | 5       |
| Primary switchgear.....   | 5       |
| Secondary switchgear.....   | 5       |
| Fire alarm system.....  | 5       |
| Nurse call system.....  | 5       |
| Intercom system.....  | 5       |
| Radio system.....   | 5       |
| TV (entertainment) system.....  | 5       |

(c) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing his/her bid and will not be binding as pertaining to any contract changes.

**Part 852 - Solicitation Provisions and Contract Clauses**

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(d) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be stored separately and will be readily available for inspection and inventory by the resident engineer.

(4) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)



Part 852 - Solicitation Provisions and Contract Clauses

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*Alternate I (JUL 2002).* If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The contractor shall at the time of contract award furnish the total cost of the guarantee period services in accordance with specification section(s) covering guarantee period services. The contractor shall submit, within 15 calendar days of receipt of the notice to proceed, a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(ii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld, and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct deficiencies and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

**852.236-83 Payments under fixed-price construction contracts (including NAS).**

As prescribed in 832.111, insert the following clause in contracts that contain a section entitled "Network Analysis System (NAS)":

**PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS  
(JUL 2002)**

The clause entitled "Payments under Fixed-Price Construction Contracts" in FAR 52.232-5 is implemented as follows:

(a) Retainage:

(1) The contracting officer may retain funds:

Part 852 - Solicitation Provisions and Contract Clauses

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(i) Where the performance under the contract has been determined to be deficient or the contractor has performed in an unsatisfactory manner in the past; or

(ii) As the contract nears completion, to ensure that deficiencies will be corrected and that completion is timely.

(2) Examples of deficient performance justifying a retention of funds include, but are not restricted to, the following:

(i) Unsatisfactory progress as determined by the contracting officer;

(ii) Failure either to meet schedules in Section Network Analysis System (NAS), or to process the Interim Arrow Diagram/Complete Project Arrow Diagram;

(iii) Failure to present submittals in a timely manner; or

(iv) Failure to comply in good faith with approved subcontracting plans, certifications or contract requirements.

(3) Any level of retention shall not exceed 10 percent either where there is determined to be unsatisfactory performance, or when the retainage is to ensure satisfactory completion. Retained amounts shall be paid promptly upon completion of all contract requirements, but nothing contained in this subparagraph shall be construed as limiting the contracting officer's right to withhold funds under other provisions of the contract or in accordance with the general law and regulations regarding the administration of Government contracts.

(b) The contractor shall submit a schedule of costs in accordance with the requirements of Section Network Analysis System (NAS) to the contracting officer for approval within 90 calendar days after date of receipt of notice to proceed. The approved cost schedule will be one of the bases for determining progress payments to the contractor for work completed.

Part 852 - Solicitation Provisions and Contract Clauses

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- (1) Costs as shown on this schedule must be true costs and, should the resident engineer so desire, he/she may require the contractor to submit his/her original estimate sheets or other information to substantiate the detailed makeup of the cost schedule.
- (2) The total costs of all activities shall equal the contract price.
- (3) Insurance and similar items shall be prorated and included in each activity cost of the critical path method (CPM) network.
- (4) The CPM network shall include a separate cost loaded activity for adjusting and testing of the systems listed below. The percentages listed below will be used to determine the cost of adjust and test activities and identify, for payment purposes, the value of the work to adjust, correct and test systems after the material has been installed.
- (5) Payment for adjust and test activities will be made only after the contractor has demonstrated that each of the systems is substantially complete and operates as required by the contract.

VALUE OF ADJUSTING, CORRECTING, AND TESTING SYSTEM

| System  | Percent |
|---|---------|
| Pneumatic tube system.....  | 10      |
| Incinerators (medical waste and trash).....                           | 5       |
| Sewage treatment plant equipment.....                                 | 5       |
| Water treatment plant equipment.....                                  | 5       |
| Washers (dish, cage, glass, etc.).....                                | 5       |
| Sterilizing equipment.....  | 5       |
| Water distilling equipment.....                                       | 5       |
| Prefab temperature rooms (cold, constant temperature)...              | 5       |
| Entire air-conditioning system (Specified under<br>600 Sections)..... | 5       |
| Entire boiler plant system (specified under<br>700 Sections).....     | 5       |
| General supply conveyors.....   | 10      |
| Food service conveyors.....   | 10      |
| Pneumatic soiled linen and trash system.....                          | 10      |
| Elevators and dumbwaiters.....  | 10      |
| Materials transport system.....                                       | 10      |

Part 852 - Solicitation Provisions and Contract Clauses

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|                                |   |
|--------------------------------|---|
| Engine-generator system.....   | 5 |
| Primary switchgear.....        | 5 |
| Secondary switchgear.....      | 5 |
| Fire alarm system.....         | 5 |
| Nurse call system.....         | 5 |
| Intercom system.....           | 5 |
| Radio system.....              | 5 |
| TV (entertainment) system..... | 5 |

(c) In addition to this cost schedule, the contractor shall submit such unit costs as may be specifically requested. The unit costs shall be those used by the contractor in preparing his/her bid and will not be binding as pertaining to any contract changes.

(d) The contracting officer will consider for monthly progress payments material and/or equipment procured by the contractor and stored on the construction site as space is available, or at a local approved location off the site, under such terms and conditions as such officer approves, including but not limited to the following:

(1) The material or equipment is in accordance with the contract requirements and/or approved samples and shop drawings.

(2) Only those materials and/or equipment as are approved by the resident engineer for storage will be included.

(3) Such materials and/or equipment will be protected against weather, theft and other hazards and will not be subjected to deterioration.

(5) All of the other terms, provisions, conditions and covenants contained in the contract shall be and remain in full force and effect as therein provided.

(6) A supplemental agreement will be executed between the Government and the contractor with the consent of the contractor's surety for off-site storage.

(e) The contractor, prior to receiving a progress or final payment under this contract, shall submit to the contracting officer a certification that the contractor has made payment from proceeds of prior payments, or that timely payment will be made from the proceeds of the progress or final payment then due, to subcontractors and suppliers in accordance with the contractual arrangements with them.

Part 852 - Solicitation Provisions and Contract Clauses

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(f) The Government reserves the right to withhold payment until samples, shop drawings, engineer's certificates, additional bonds, payrolls, weekly statements of compliance, proof of title, nondiscrimination compliance reports, or any other things required by this contract, have been submitted to the satisfaction of the contracting officer.

(End of Clause)

*Alternate I (JUL 2002).* If the specifications include guarantee period services, the contracting officer shall include the following paragraphs as additions to paragraph (b) of the basic clause:

(6)(i) The contractor shall show on the critical path method (CPM) network the total cost of the guarantee period services in accordance with the guarantee period service section(s) of the specifications. This cost shall be priced out when submitting the CMP cost loaded network. The cost submitted shall be subject to the approval of the contracting officer. The activity on the CPM shall have money only and not activity time.

(ii) The contractor shall submit with the CPM a guarantee period performance program which shall include an itemized accounting of the number of work-hours required to perform the guarantee period service on each piece of equipment. The contractor shall also submit the established salary costs, including employee fringe benefits, and what the contractor reasonably expects to pay over the guarantee period, all of which will be subject to the contracting officer's approval.

(iii) The cost of the guarantee period service shall be prorated on an annual basis and paid in equal monthly payments by VA during the period of guarantee. In the event the installer does not perform satisfactorily during this period, all payments may be withheld and the contracting officer shall inform the contractor of the unsatisfactory performance, allowing the contractor 10 days to correct and comply with the contract. The guarantee period service is subject to those provisions as set forth in the Payments and Default clauses.

**852.236-84 Schedule of work progress.**

As prescribed in 836.575, insert the following clause:

**SCHEDULE OF WORK PROGRESS (NOV 1984)**

(a) The contractor shall submit with the schedule of costs, a progress schedule that indicates the anticipated installation of work versus the elapsed contract time, for the approval of the contracting officer. The progress schedule time shall be represented in the form of a bar graph with the contract time plotted along the horizontal axis. The starting date of the schedule shall be the date the contractor receives the "Notice to Proceed." The ending date shall be the original contract completion date. At a minimum, both dates shall be indicated on the progress schedule. The specific item of work, i.e., "Excavation", "Floor Tile", "Finish Carpentry", etc., should be plotted along the vertical axis and indicated by a line or bar at which time(s) during the contract this work is scheduled to take place. The schedule shall be submitted in triplicate and signed by the contractor.

(b) The actual percent completion will be based on the value of installed work divided by the current contract amount. The actual completion percentage will be indicated on the monthly progress report.

(c) The progress schedule will be revised when individual or cumulative time extensions of 15 calendar days or more are granted for any reason. The revised schedule should indicate the new contract completion date and should reflect any changes to the installation time(s) of the items of work affected.

(d) The revised progress schedule will be used for reporting future scheduled percentage completion.

(End of Clause)

**852.236-85 Supplementary labor standards provisions.**

As prescribed in 836.576, insert the following clause:

**SUPPLEMENTARY LABOR STANDARDS PROVISIONS (APR 1984)**

(a) The wage determination decision of the Secretary of Labor is set forth in section GR, General Requirements, of this contract. It is the result of a study of wage conditions in the locality and establishes the minimum hourly rates of wages and fringe benefits for the described classes of labor in

**Part 852 - Solicitation Provisions and Contract Clauses**

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accordance with applicable law. No increase in the contract price will be allowed or authorized because of payment of wage rates in excess of those listed.

(b) The contractor shall submit the required copies of payrolls to the contracting officer through the resident engineer or engineer officer, when acting in that capacity. Department of Labor Form WH-347, Payroll, available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, may be used for this purpose. If, however, the contractor or subcontractor elects to use an individually composed payroll form, it shall contain the same information shown on Form WH-347, and in addition be accompanied by Department of Labor Form WH-348, Statement of Compliance, or any other form containing the exact wording of this form.

(End of Clause)

**852.236-86 Worker's compensation.**

As prescribed in 836.577, insert the following clause:

**WORKER'S COMPENSATION (JUL 2002)**

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of States to apply their worker's compensation laws to all lands and premises owned or held by the United States.

(End of Clause)

**852.236-87 Accident Prevention.**

As prescribed in 836.513, insert the following clause:

**ACCIDENT PREVENTION (SEP 1993)**

The Resident Engineer on all assigned construction projects, or other Department of Veterans Affairs employee if designated in writing by the Contracting Officer, shall serve as Safety Officer and as such has authority, on behalf of the Contracting Officer, to monitor and enforce Contractor compliance with FAR 52.236-13, Accident Prevention. However, only the Contracting Officer may issue an order to stop all or part of the work while requiring satisfactory or corrective action to be taken by the Contractor.

(End of Clause)

**852.236-88 Contract changes – supplement.**

As prescribed in 836.578, insert the following clause:

**CONTRACT CHANGES - SUPPLEMENT (JUL 2002)**

The clauses entitled "Changes" in FAR 52.243-4 and "Differing Site Conditions" in FAR 52.236-2 are supplemented as follows:

(a) Paragraphs (a)(1) through (a)(4) apply to proposed contract changes costing over \$500,000.

(1) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted as expeditiously as possible but within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data are required under FAR Subpart 15.403, the cost or pricing data shall be submitted in accordance with FAR 15.403-5.

(2) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit a proposal, which includes the information required by paragraph (a)(1), for cost of changes in work within 30 calendar days.

(3) The contracting officer will consider issuing a settlement by determination to the contract if the contractor's proposal required by paragraphs (a) and (b) of this clause is not received within 30 calendar days or if agreement has not been reached.



**Part 852 - Solicitation Provisions and Contract Clauses**

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(4) Bond premium adjustment, consequent upon changes ordered, will be made as elsewhere specified at the time of final settlement under the contract and will not be included in the individual change.

(b) Paragraphs (b)(1) through (b)(11) apply to proposed contract changes costing \$500,000 or less:

(1) When requested by the contracting officer, the contractor shall submit proposals for changes in work to the resident engineer. Proposals, to be submitted as expeditiously as possible but within 30 calendar days after receipt of request, shall be in legible form, original and two copies, with an itemized breakdown that will include material, quantities, unit prices, labor costs (separated into trades), construction equipment, etc. (Labor costs are to be identified with specific material placed or operation performed.) The contractor must obtain and furnish with a proposal an itemized breakdown as described above, signed by each subcontractor participating in the change regardless of tier. When certified cost or pricing data or information other than cost or pricing data are required under FAR 15.403, the data shall be submitted in accordance with FAR 15.403-5. No itemized breakdown will be required for proposals amounting to less than \$1,000.

(2) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit within 30 calendar days a proposal, which includes the information required by paragraph (b)(1), for the cost of the changes in work.

(3) The contracting officer will consider issuing a settlement by determination to the contract if the contractor's proposal required by paragraphs (a) and (b) of this clause is not received within 30 calendar days or if agreement has not been reached.

(4) Allowances not to exceed 10 percent each for overhead and profit for the party performing the work will be based on the value of labor, material, and use of construction equipment required to accomplish the change. As the value of the change increases, a

**Part 852 - Solicitation Provisions and Contract Clauses**

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declining scale will be used in negotiating the percentage of overhead and profit. Allowable percentages on changes will not exceed the following: 10 percent overhead and 10 percent profit on the first \$20,000; 7-1/2 percent overhead and 7-1/2 percent profit on the next \$30,000; 5 percent overhead and 5 percent profit on balance over \$50,000. Profit shall be computed by multiplying the profit percentage by the sum of the direct costs and computed overhead costs.

(5) The prime contractor's or upper-tier subcontractor's fee on work performed by lower-tier subcontractors will be based on the net increased cost to the prime contractor or upper-tier subcontractor, as applicable. Allowable fee on changes will not exceed the following: 10 percent fee on the first \$20,000; 7-1/2 percent fee on the next \$30,000; and 5 percent fee on balance over \$50,000.

(6) Not more than four percentages, none of which exceed the percentages shown above, will be allowed regardless of the number of tiers of subcontractors.

(7) Where the contractor's or subcontractor's portion of a change involves credit terms, such items must be deducted prior to adding overhead and profit for the party performing the work. The contractor's fee is limited to the net increase to contractor of subcontractors' portions cost computed in accordance herewith.

(8) Where a change involves credit items only, a proper measure of the amount of downward adjustment in the contract price is the reasonable cost to the contractor if he/she had performed the deleted work. A reasonable allowance for overhead and profit are properly includable as part of the downward adjustment for a deductive change. The amount of such allowance is subject to negotiation.

(9) Cost of Federal Old Age Benefit (Social Security) tax and of Worker's Compensation and Public Liability insurance appertaining to changes are allowable. While no percentage will be allowed thereon for overhead or profit, prime contractor's fee will be allowed on such items in subcontractor's proposals.

(10) Overhead and contractor's fee percentages shall be considered to include insurance other than mentioned herein, field and office supervisors and assistants, security police, use of small tools, incidental job burdens, and general home office expenses and no separate allowance will be made therefore. Assistants to office

**Part 852 - Solicitation Provisions and Contract Clauses**

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supervisors include all clerical, stenographic and general office help. Incidental job burdens include, but are not necessarily limited to, office equipment and supplies, temporary toilets, telephone and conformance to OSHA requirements. Items such as, but not necessarily limited to, review and coordination, estimating and expediting relative to contract changes are associated with field and office supervision and are considered to be included in the contractor's overhead and/or fee percentage.

(11) Bond premium adjustment, consequent upon changes ordered, will be made as elsewhere specified at the time of final settlement under the contract and will not be included in the individual change.

(End of Clause)

**852.236-89 Buy American Act.**

As prescribed at 825.1102, insert the following clause:

**BUY AMERICAN ACT (JUL 2002)**

(a) Reference is made to the clause entitled "Buy American Act – Balance of Payments Program – Construction Materials," FAR 52.225-9.

(b) Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225-9, VA does not anticipate accepting an offer that includes foreign construction material.

(c) If a bidder chooses to submit a bid that includes foreign construction material, that bidder must provide a listing of the specific foreign construction material he/she intends to use and a price for said material. Bidders must include bid prices for comparable domestic construction material. If VA determines not to accept foreign construction material and no comparable domestic construction material is provided, the entire bid will be rejected.

(d) Any foreign construction material proposed after award will be rejected unless the bidder proves to VA's satisfaction: (1) it was impossible to request the exemption prior to award, and (2) said domestic construction material is no longer available, or (3) where the price has escalated so dramatically after the contract has been awarded that it would be unconscionable to require performance at that price. The determinations required by (1), (2), and (3) of this paragraph shall be made in accordance with subpart 825.2 and FAR 25.2.

(e) By signing this bid, the bidder declares that all articles, materials and supplies for use on the project shall be domestic unless specifically set forth on the Bid Form or addendum thereto.

(End of Cause)

*Alternate I (JUL 2002).* As prescribed in 825.1102(b), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled "Buy American Act –Balance of Payment Program – Construction Materials under Trade Agreements," FAR 52.225-11.

(b) The restrictions contained in this clause 852.236-89 are waived for Trade Agreements Act (TAA) designated country construction material, as defined in FAR 52.225-11. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225-11, VA does not anticipate accepting an offer that includes foreign construction material, other than TAA designated country construction material.

*Alternate II (JUL 2002).* As prescribed in 825.1102(c), substitute the following paragraphs for paragraphs (a) and (b) of the basic clause:

(a) Reference is made to the clause entitled "Buy American Act –Balance of Payment Program – Construction Materials under Trade Agreements," FAR 52.225-11.

(b) The restrictions contained in this clause 852.236-89 are waived for Trade Agreements Act (TAA) designated country construction material and North American Free Trade Agreement (NAFTA) country construction material, as defined in FAR 52.225-11. Notwithstanding a bidder's right to offer identifiable foreign construction material in its bid pursuant to FAR 52.225-11, VA does not anticipate accepting an offer that includes foreign construction material, other than TAA designated country construction material or NAFTA country construction material.

**852.236-90 Restriction on submission and use of equal products.**

As prescribed in 836.202(c), the following clause shall be included in the solicitation if it is determined that only one product will meet the Government's minimum needs and the Department of Veterans Affairs will not allow the submission of "equal" products:

**RESTRICTION ON SUBMISSION AND USE OF EQUAL  
PRODUCTS (NOV 1986)**

The clause applies to the following items:

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Notwithstanding the "Material and Workmanship" clause of this contract, FAR 52.236-5(a), nor any other contractual provision, "equal" products will not be considered by the Department of Veterans Affairs and may not be used.

(End of Clause)

**852.236-91 Special notes.**

As prescribed in 836.579, insert the following clause:

**SPECIAL NOTES (JUL 2002)**

(a) Signing of the bid shall be deemed to be a representation by the bidder that:

(1) Bidder is a construction contractor who owns, operates, or maintains a place of business, regularly engaged in construction, alteration or repair of buildings, structures, communications facilities, or other engineering projects, including furnishing and installing of necessary equipment; or

(2) If newly entering into a construction activity, bidder has made all necessary arrangements for personnel, construction equipment, and required licenses to perform construction work; and

(3) Upon request, prior to award, bidder will promptly furnish to the Government a statement of facts in detail as to bidder's previous experience (including recent and current contracts), organization (including company officers), technical qualifications, financial resources and facilities available to perform the contemplated work.

(b) Unless otherwise provided in this contract, where the use of optional materials or construction is permitted, the same standard of workmanship, fabrication and installation shall be required irrespective of which option is selected. The contractor shall make any change or adjustment in connecting

Part 852 - Solicitation Provisions and Contract Clauses

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work or otherwise necessitated by the use of such optional material or construction, without additional cost to the Government.

(c) When approval is given for a system component having functional or physical characteristics different from those indicated or specified, it is the responsibility of the contractor to furnish and install related components with characteristics and capacities compatible with the approved substitute component as required for systems to function as noted on drawings and specifications. There shall be no additional cost to the Government.

(d) In some instances it may have been impracticable to detail all items in specifications or on drawings because of variances in manufacturer's methods of achieving specified results. In such instances the contractor will be required to furnish all labor, materials, drawings, services and connections necessary to product systems or equipment which are completely installed, functional, and ready for operation by facility personnel in accordance with their use.

(e) Claims by the contractor for delay attributed to unusually severe weather must be supported by climatological data covering the period and the same period for the 10 preceding years. When the weather in question exceeds in intensity or frequency the 10 year average, the excess experienced shall be considered "unusually severe." Comparison shall be on a monthly basis. Whether or not unusually severe weather in fact delays the work will depend upon the effect of weather on the branches of work being performed during the time under consideration.

(End of Clause)

**852.237-7 Indemnification and Medical Liability Insurance.**

As prescribed in 837.403, insert the following clause:

**INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE  
(OCT 1996)**

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor or its health-care providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided but retains no control over professional aspects of the services rendered, including by example, the Contractor's or its health-care providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its health-care

Part 852 - Solicitation Provisions and Contract Clauses

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providers shall be liable for their liability-producing acts or omissions. The Contractor shall maintain or require all health-care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: [Contracting Officer insert the dollar amount value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests]. However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

(b) An apparently successful offeror, upon request of the Contracting Officer, shall, prior to contract award, furnish evidence of the insurability of the offeror and/or of all health-care providers who will perform under this contract. The submission shall provide evidence of insurability concerning the medical liability insurance required by paragraph (a) of this clause or the provisions of State law as to self-insurance, or limitations on liability or insurance.

(c) The Contractor shall, prior to commencement of services under the contract, provide to the Contracting Officer Certificates of Insurance or insurance policies evidencing the required insurance coverage and an endorsement stating that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. Certificates or policies shall be provided for the Contractor and/or each health-care provider who will perform under this contract.

(d) The Contractor shall notify the Contracting Officer if it, or any of the health-care providers performing under this contract, change insurance providers during the performance period of this contract. The notification shall provide evidence that the Contractor and/or health-care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health-care services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph (a) of this clause.

(End of Clause)

**852.237-70 Contractor responsibilities.**

- (a) Fixed-price negotiated or advertised service contracts, other than automobile ambulance and aircraft services, will include the following clause:

**CONTRACTOR RESPONSIBILITIES (APR 1984)**

The contractor shall obtain all necessary licenses and/or permits required to perform this work. He/she shall take all reasonable precautions necessary to protect persons and property from injury or damage during the performance of this contract. He/she shall be responsible for any injury to himself/herself, his/her employees, as well as for any damage to personal or public property that occurs during the performance of this contract that is caused by his/her employees fault or negligence, and shall maintain personal liability and property damage insurance having coverage for a limit as required by the laws of the State of [ ]. Further, it is agreed that any negligence of the Government, its officers, agents, servants and employees, shall not be the responsibility of the contractor hereunder with the regard to any claims, loss, damage, injury, and liability resulting therefrom.

(End of Clause)

- (b) Automobile, ambulance and aircraft service contracts will utilize the clause prescribed in 852.237-71.

**852.237-71 Indemnification and insurance (vehicle and aircraft service contracts).**

- (a) Contracts for vehicle and aircraft services will utilize the following clause as provided in 828.306.

**INDEMNIFICATION AND INSURANCE (APR 1984)**

- (a) Indemnification. The contractor expressly agrees to indemnify and save the Government, its officers, agents, servants, and employees harmless from and against any and all claims, loss, damage, injury, and liability, however caused, resulting from, arising out of, or in any way connected with the performance of work under this agreement. Further, it is agreed that any negligence or alleged negligence of the Government, its officers, agents, servants, and employees, shall not be a bar to a claim for indemnification unless the act or omission of the Government, its officers, agents, servant, and employees is the sole, competent, and producing cause of such claims, loss, damage, injury, and liability. At the option of the contractor, and subject to the approval by the contracting officer of the sources, insurance coverage may be employed as guaranty of indemnification.



Part 852 - Solicitation Provisions and Contract Clauses

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(b) Insurance. Satisfactory insurance coverage is a condition precedent to award of a contract. In general, a successful bidder must present satisfactory evidence of full compliance with State and local requirements, or those below stipulated, whichever are the greater. More specifically, workmen's compensation and employer's liability coverage will conform to applicable State law requirements for the service contemplated, whereas general liability and automobile liability of comprehensive type, shall in the absence of higher statutory minimums, be required in the amounts per vehicle used of not less than \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. State approved sources of insurance coverage ordinarily will be deemed acceptable to the VA installation, subject to timely certifications by such sources of the types and limits of the coverages afforded by the sources to the bidder. (In those instances where airplane service is to be used, substitute the word "aircraft" for "automobile" and "vehicle" and modify coverage to require aircraft public and passenger liability insurance of at least \$200,000 per passenger and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.)

(End of Clause)

(b) *Exceptions.* The provisions of this 852.237-71 do not apply to emergency or sporadic ambulance service authorized by VA Manual MP-1, Part II, Chapter 3: *Provided*, That such service is not used solely for the purpose of avoiding entering into a continuing contract. *Provided further*, That such services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

**852.246-1 Special warranties.**

As prescribed in 846.710-70, insert the following clause:

**SPECIAL WARRANTIES (JUL 2002)**

The clause entitled "Warranty of Construction" in FAR 52.246-1 is supplemented as follows:

Any special warranties that may be required under the contract shall be subject to the elections set forth in the FAR clause at 52.246-1, Warranty of Construction, unless otherwise provided for in such special warranties.

(End of Clause)

**852.246-2 Warranty for construction – guarantee period services.**

As prescribed in 846.710-71, insert the following clause:

**WARRANTY FOR CONSTRUCTION – GUARANTEE PERIOD  
SERVICES (JUL 2002)**

The clause entitled “Warranty of Construction” in FAR 52.246-2 is supplemented as follows:

Should the contractor fail to prosecute the work or fail to proceed promptly to provide guarantee period services after notification by the contracting officer, the Government may, subject to the default clause contained at FAR Section 52.249-10, Default (Fixed-Price Construction), and after allowing the contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the separable part of the work) that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliance, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damages to the Government resulting from the contractor’s refusal or failure to complete the work within this specified time, whether or not the contractor’s right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(End of Clause)

**852.247-70 Transportation provision for bid evaluation**

In circumstances enunciated in 847.305-70, the following provision will be inserted in the IFB:

**DETERMINING TRANSPORTATION COSTS FOR BID EVALUATION  
(APR 1984)**

For the purpose of evaluating bids and for no other purpose, the delivered price per unit will be determined by adding the nationwide average transportation charge to the f.o.b. origin bid prices. The nationwide average transportation charge will be determined by applying the following formula: Multiply the guaranteed shipping weight by the freight, parcel post, or express rate, whichever is proper, to each destination shown below and then multiply the resulting transportation charges by the anticipated demand factor shown for each destination. Total the resulting weighted transportation charges for all destinations and divide the total by 20 to give the nationwide average transportation charge.

ANTICIPATED DEMAND

| Area destination:             | Factor |
|-------------------------------|--------|
| Oakland, California . . . . . | 3      |
| Dallas, Texas. . . . .        | 2      |
| Omaha, Nebraska . . . . .     | 3      |
| Fort Wayne, Indiana . . . . . | 4      |
| Atlanta, Georgia . . . . .    | 3      |
| New York, New York. . . . .   | 5      |
| Total of factors. . . . .     | 20     |

(End of Provision)

**852.252-1 Provisions or clauses requiring completion by the offeror or prospective contractor.**

As prescribed in 852.102(a), insert the following provision:

**PROVISIONS OR CLAUSES THAT REQUIRE COMPLETION BY THE OFFEROR OR PROSPECTIVE CONTRACTOR (DEC 1999)**

The following provisions or clauses incorporated by reference in this solicitation must be completed by the offeror or prospective contractor and submitted with the quotation or offer. Copies of these provisions or clauses are available on the Internet at the web sites provided in the provision at FAR 52.252-1, Solicitation Provisions Incorporated by Reference, or the clause at FAR 52.252-2, Clauses Incorporated by Reference. Copies may also be obtained from the contracting officer.

*[Contracting officer shall list all FAR and 48 CFR Chapter 8 (VAAR) provisions and clauses incorporated by reference that must be completed by the offeror or prospective contractor and submitted with the quotation or offer.]*

(End of provision)

**852.270-1 Representatives of contracting officers.**

Whenever it is considered necessary to designate a representative under 801.603-70, the following provision will be made a part of the request for proposal or invitation to bid:

**THE NEXT PAGE IS PAGE 52-55**

**VAAC 97-9 August 29, 2002**

Department of Veterans Affairs Acquisition Regulation

Part 852 - Solicitation Provisions and Contract Clauses

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